

Practising Law Institute

Employment Discrimination Law & Litigation 2021

Jun 14, 2021

From the Convenience of your Home or Office

SCHEDULE

Jun 14, 2021 Day 1 9:00 AM EDT

9:00 AM EDT Opening Remarks

Speakers: Louis P. DiLorenzo, Susan Ritz

9:15 AM EDT Intersectionality: When Multiple Protected Classes Cumulatively Cause Discrimination and Harassment

- What is intersectionality?
 - How does it relate to sex-plus analysis?
 - Is it applicable outside of race and gender claims?
- Does “because of” analysis work for dual discrimination?
- How do employees with multiple protected characteristics prove a case?
- How do courts and juries view intersectional claims?
- Do NDAs and arbitration clauses disparately impact women of color?

Featured Speaker: Jamillah Bowman Williams, J.D., Ph.D.

9:45 AM EDT Disability Discrimination, Reasonable Accommodation and the Interactive Process in 2021

- What constitutes “disability” in 2021?
 - Has 2021 changed how disabilities are accommodated?
 - Post-Covid changes in undue hardship analysis
- What is and is not a reasonable accommodation:
 - Leaves of absence (paid or unpaid) and extensions
 - Part-time work
 - Remote work
 - Private offices
 - Flexible hours
- What should employers do if they suspect an employee has a disability?
- What can employers say to other employees about a coworker’s reasonable accommodation?
- What information can employers ask for when an employee seeks a reasonable accommodation
- Best practices for proving engagement in the interactive process
- Significant differences among Federal, State and local laws

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Speakers: Miriam F. Clark, James E. McGrath, III, Temitope K. Yusuf

11:00 AM EDT **Break**

11:15 AM EDT Individual Expression and Discrimination in the 2021 Workplace

- Policies limiting political or other expressions of speech or ideas
- Regulating off duty conduct
- Dress and grooming policies
- Rainbow flags
- Black Lives Matter
- Religious discrimination
- Natural Hair Movement in NY and CA
- Use of social media/NLRA considerations
- Retaliation claims

Speakers: Jeanne Goldberg, Stephen J. Hirschfeld, Shannon Liss-Riordan

12:15 PM EDT **Lunch**

1:00 PM EDT Gender Discrimination in the 2020s Workplace

- How have #MeToo and #TimesUp influenced sexual harassment law and workplaces generally?
- What has Covid-19 taught us about protections for women in the workplace?
- Is the landscape for gender claims changing?
 - Impact of *U.S. Soccer* and other pay equity cases
- Will AI have an impact on gender discrimination claims?
- Is AI influenced by gender and what are the workplace legal implications?

Speakers: Theodora R. Lee, Melissa S. Woods

2:00 PM EDT Implicit Bias in the Legal Workplace

- Establishing lawful goals for hiring, retention, promotion and leadership in legal workplaces
- The impact of Model Rule 8.4's prohibition on harassment and discrimination on law practice

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- Combatting implicit bias in the legal profession
- What practices do, and do not, succeed when promoting diversity and inclusion in law firms?
- Bystander training in legal workplaces

(Bias/Diversity credit where applicable)

Speakers: Rosevelie Márquez Morales, Deborah Martin Owens

3:00 PM EDT **Break**

3:15 PM EDT Arbitration of Employment Discrimination Claims

- The arbitration agreement and drafting issues
- Selecting an arbitrator
- Choosing an arbitral forum
- The procedural rules (discovery, motions, the hearing)
- Pros and cons of arbitration, jury waiver or court litigation
- Evidentiary rule differences
- Third-party discovery in arbitration, including document requests and subpoenas
- Is remote arbitration (video-conference) here to stay?

Speakers: Karla Gilbride, Jill L. Rosenberg, Stephen P. Sonnenberg

4:15 PM EDT Ethics of Witness Preparation in Employment Discrimination Cases

- When does witness preparation cross lines as drawn by the Restatement Third Governing Lawyers, the ABA Model Rules and the New York Rules of Professional Conduct 1.2(d), 3.3(a)(3), 3.4(a)(5) and 8.4(b), (c) and (d)?
- What is the “lecture” and is it lawful?
- Can lawyers dictate words to be used in testimony?
- May lawyers suggest altering a witness’s appearance for their testimony?
- What are proper ways to refresh a witness’s recollection?
- When does coaching cross the line?

(Ethics Credit)

Speakers: Louis P. DiLorenzo, Candace J. Gomez, Cara E. Greene, Susan Ritz

5:15 PM EDT **Adjourn**

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