



**Litigating Wage & Hour Cases:
Challenges & Opportunities
March 31–April 1, 2017
Sheraton Silver Spring Hotel
Silver Spring, MD**

Wi-Fi Code: Meeting291

PROGRAM

FRIDAY, MARCH 31, 2017

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| 7:30–9:00 a.m. | Registration & Continental Breakfast | Cypress Foyer |
| 8:45–9:00 a.m. | Welcome & Opening Remarks
Alicia K. Haynes, NELA President & Matthew C. Koski, NELA Program Director | Cypress Ballroom |
| 9:00–10:15 a.m. | Significant Developments, Recent Trends & Emerging Issues In Wage & Hour Law
Moderator/Speaker: Richard J. (Rex) Burch
Speakers: Peter Winebrake & Catha Worthman
Our panelists will provide an in-depth review of recent developments in the U.S. Supreme Court, key cases from the lower federal courts, as well as government regulations and their implications for wage and hour practitioners. | Cypress Ballroom |
| 10:15–10:30 a.m. | Break | Cypress Foyer |
| 10:30–11:45 a.m. | Recovering Stolen Wages From “Fissured” Workplaces
Moderator: Marni Willenson
Speakers: Miguel Keberlein & Christopher J. Wilmes
What do Uber, McDonald’s, Comcast, Empire Janitorial, and Consolidated Citrus have in common? These companies rely heavily on subcontracted, franchised, or other contingent labor—and their contingent workers have sued them for wage theft, often with great success and extraordinary challenges. In today’s workplace, employees are outsourced, subcontracted, brokered, and employed through franchise agreements. These arrangements have blurred lines and can complicate the recovery of stolen wages for a contingent workforce. Our “fissured workplace” panel will discuss strategies for holding solvent, joint employers accountable for wage theft when workers are nominally employed through labor supply companies, or purportedly not “employed” at all. | Cypress Ballroom |
| 11:45 a.m.–1:00 p.m. | Roundtable Lunch Discussions | Mica Restaurant |
| 1:15–2:30 p.m. | Concurrent Sessions | |
| | The Nuts & Bolts Of A Wage & Hour Case From Intake To Resolution
Moderator: Melissa Lardo Stewart
Speakers: Valerie Brender & Lesley Tse
This session will guide practitioners relatively new to wage and hour law through the challenges of case preparation and execution. Topics include how to locate and ethically communicate with potential opt-in plaintiffs, plead an FLSA claim to avoid issues under <i>Iqbal/Twombly</i> , dealing with Rule 68 offers of judgment and other strategies used by defendants to eliminate collective claims, preparing your clients for depositions, and communicating effectively with class members in order to present your liability and damages claims effectively. | Cedar |

**The Scourge Of Bankruptcy:
Successful Strategies To Collect Judgments &
Prevent Employers From Dissipating Assets**

Cypress Ballroom

Moderator/Speaker: Michael Sweeney

Speakers: Rebekah L. Bailey & Matthew Dundon

Wage and hour practitioners often face the threat or reality that defendant employers will seek to avoid their responsibility to pay workers' wages by declaring bankruptcy. The panelists will address litigation strategies that lay the ground work for collecting on a judgment from the outset of a case, including employer and asset investigation, pre-judgment discovery, and pre-judgment remedies. They will then explore what to do if a defendant declares bankruptcy after a judgment is entered during the pendency of litigation, the differences between a chapter 7 and chapter 11 bankruptcy, how the distinctions affect the litigation. Specific issues to be covered are the effect of the automatic bankruptcy stay on pending litigation, filing proofs of claim in the bankruptcy proceeding, when a wage claim is a priority claim, the priority administrative claim for back pay, the benefits of attending a 2004 examination, getting to know the bankruptcy trustee, taking a 2004 examination, judgment creditors' rights to financial information, and how to argue that a wage claim is not dischargeable.

**Navigating The Challenges in Representing
Service Industry or "Tipped" Employees**

Persimmon I & II

Moderator/Speaker: Jill A. Hernandez

Speakers: Joshua D. Buck & Bruce E. Miller

While the FLSA "tip credit" provision offers employers a cost-effective method to meet their statutory minimum wage requirements, by allowing a portion of each employee's tips to be counted toward the employers' minimum wage obligations, complexities in the law leave room for misuse and violations, including wage, overtime, and tip theft. This panel will address common issues related to the application of the tip credit, such as the employers' notification and recordkeeping duties, retention of tips, misappropriation of tips through an invalid tip pool, and misclassification of tips as service charges. This panel will also explore new developments in the area, including recent circuit and district court decisions related to an employee's ability to recover tips and wages, new DOL regulations, the treatment of tips when the tip credit is *not* taken, and the interplay of state law and the FLSA's governance of tips.

2:30–2:45 p.m.

Break

Cypress Foyer

2:45–4:00 p.m.

Concurrent Sessions

Litigating Wage & Hour Cases On Behalf Of Federal Employees **Persimmon I & II**

Speakers: David L. Kern & Daniel M. Rosenthal

This session will review the considerations that are unique to representing federal employees with wage and hour claims, which typically are resolved in the Court of Federal Claims (CFC) and can arise under a variety of interconnected federal statutes. Advocates representing workers in these actions need to understand the peculiar constraints that apply in the CFC, such as the inability to bring opt-out class claims and the lack of jury trials. Our panelists also will present strategies regarding class certification, maximizing opt-ins or otherwise joining claimants to the action, conducting discovery efficiently and effectively, coordinating with federal employee unions where necessary, and negotiating settlements.

Representing Workers In Motor Carrier Act Cases **Cypress Ballroom**

Moderator/Speaker: Jeremi K. Young
Speakers: Jessica Bresler & Raymond Wendell

The SAFETEA-LU Technical Corrections Act (TCA) turns nine this year and employer efforts to expand the MCA or limit the TCA can be thwarted by well-informed lawyers. This panel of practitioners with MCA experience will discuss (1) the basic structure of the MCA/TCA and recent decisions concerning which party has the burden of proof at trial, (2) what courts are saying in mixed fleet cases, (3) the interplay between DOT and DOL regulations which may conflict, (4) strategies to counter the MCA exemption, (5) discovery strategies and sources of proof for MCA cases going to trial, and much more.

4:00–4:15 p.m. **Break** **Cypress Foyer**

4:15–5:30 p.m. **Taking Effective 30(b)(6) Depositions In Wage & Hour Cases** **Cypress Ballroom**

Moderator/Speaker: Robert L. Schug
Speakers: Marc Cote & Christine E. Webber

Our experienced practitioners will provide a detailed roadmap to help you get the most out of 30(b)(6) depositions in wage and hour cases, including strategies for navigating the increasing number of obstacles being used by defendants to delay a 30(b)(6) deposition from taking place and preventing such depositions from serving their intended purpose.

5:30–7:00 p.m. **Reception** **Mica Lounge**

Co-sponsored by The Employee Rights Advocacy Institute For Law & Policy, the Metropolitan Washington Employment Lawyers Association & the Ates Law Firm, PC.

SATURDAY, APRIL 1, 2017

8:00–9:00 a.m. **Registration & Continental Breakfast**

9:00–10:15 a.m. **Litigating Claims On Behalf Of Low-Wage & Immigrant Workers** **Cypress Ballroom**

Moderator: Daniel A. Katz
Speakers: Sally Dworak-Fisher & Meredith Stewart

Representing low-wage and immigrant workers poses unique challenges to plaintiffs' employment lawyers, especially as the federal government shifts away from policies designed to protect America's most vulnerable workers. Our speakers will explore issues particular to litigating claims on behalf of low-wage and immigrant workers, including developing evidence to support plaintiffs' claims; the impact of immigration status on available relief; the intersection of wage and discrimination claims; working with unions and low-wage and immigrant-based community organizations; preparing clients for depositions and trial, including addressing immigration-related questions during the course of depositions; additional defense tactics and how to combat them; and preventing and redressing retaliation against workers who assert their rights.

10:15–10:30 a.m. **Break** **Cypress Foyer**

10:30–11:45 a.m. **Wage & Hour Litigation From The Defense Perspective** **Cypress Ballroom**

Moderator: Laura L. Ho
Speakers: Brett C. Bartlett, Paul DeCamp, & Anne Marie Estevez

Increase the productivity of your interactions with opposing counsel by joining us for a candid, cordial discussion with members of the defense bar regarding their perspectives on wage and hour litigation from their side of the "v," including issues such as case valuation, class certification, alternative dispute resolution, and settlement.

11:45 a.m.–1:00 p.m. **Lunch (On Your Own)**

- 1:15–2:30 p.m. **How To Settle Without “Settling”** **Cypress Ballroom**
Moderator/Speaker: Rachel Geman
Speakers: Michael D. Palmer & Bryan J. Schwartz
Our panelists will discuss how to secure the best settlement for your clients. They will explain how and when to approach settlement with defendants (pre-litigation, pre- or post-notice); strategies for bringing defendants to the negotiating table; what to do to ensure that you are well-prepared for negotiations; what issues, economic and non-economic, should be addressed in negotiations to avoid complications in effectuating the deal; and seeking court approval of the settlement, effective settlement notice programs, and attorneys’ fees and costs issues including the recent trend of denying requests for a percentage of the fund, closely scrutinizing fee rates, and reducing or eliminating fee multipliers.
- 2:30–2:45 p.m. **Break** **Cypress Foyer**
- 2:45–4:00 p.m. **Winning Wage & Hour Trials Without Really Trying** **Cypress Ballroom**
Moderator: Brendon Donelon
Speaker: Stanley D. Saltzman & Hillary Schwab
This session will take you through the trial process beginning with anticipated motions *in limine* issues, effective *voir dire* for a wage and hour case, representative proof issues including class member witness selection and kinds of evidence that should be presented at trial to appeal proof the verdict, effective opening and closing statements, presenting damages at trial (either through experts, the plaintiffs, or other lay witnesses like a paralegal or firm employee), and jury instructions.
- 4:00–4:15 p.m. **Break** **Cypress Foyer**
- 4:15–5:30 p.m. **Strategies For Securing Wages In The Face Of Government Hostility & Under-Enforcement** **Cypress Ballroom**
Moderator/Speaker: J. Derek Braziel
Speakers: Molly Brooks, Jennifer Lin Liu & Honorable M. Patricia Smith
The results of the November 2016 elections have created substantial uncertainty and anxiety among those who represent workers in wage and hour cases. We will close our seminar with an interactive discussion that will offer practice tips and strategies for navigating the expected stormy waters ahead regarding enforcement of the FLSA as well as related statutes and regulations. Attendees will also have an opportunity to offer their perspectives on how we, as a community of workers’ rights advocates, can best support each other and our clients in the absence of robust enforcement by federal agencies.
- 5:30 p.m. **Adjournment**