

#NELA16

Table Of Contents

The 2016 Annual Convention Manual contains all written materials received by the National Employment Lawyers Association as of May 16, 2016. Late and supplemental submissions will be available online for a limited period on NELA's website (www.nela.org/nela16). NELA acknowledges the generosity of LexisNexis for sponsoring the production of the 2016 Annual Convention Manual.

The written materials are listed in the Table of Contents by day and topic in the order they are published in the National Employment Lawyers Association's 2016 Annual Convention Program Guide.



THURSDAY, JUNE 23, 2016

Implicit Bias In The Courtroom

Implicit Bias In The Courtroom, The Honorable Bernice B. Donald (10 pages)	11
Charlotte Fishman (6 pages)	21
Implicit Bias In The Courtroom, Therese M. Lawless (29 pages)	27
Litigating Under The New Federal Rules Of Discovery	
Proposed Amendments To The Federal Rules Of Civil Procedure PowerPoint® Presentation, The Honorable David G. Campbell (9 pages)	56
2015 Amendments To The Federal Rules Of Civil Procedure: Challenging The	
Defense-Side Narrative, Jennifer I. Klar & Margaret Burgess (20 pages)	65
How To Deal With Discovery Of ESI	
Working With Information Technology Experts, Linda Sharp & Brian E. Koncius	95
(30 pages)	85
Pilot Project Regarding Initial Discovery Protocols For Employment Cases Alleging	
Adverse Action, Federal Judicial Center (17 pages)	115

	What You Need To Know About The New Rule 37(3), Ariana J. Tadler &	
	Henry J. Kelston (6 pages)	136
	FRCP 37 Flow Chart, Eric P. Mandel (1 page)	142
	The Sedona Conference "Jumpstart Outline": Questions To Ask Your Client & Your	
	Adversary To Prepare For Preservation, Rule 26 Obligations, Court Conferences &	
	Requests For Production, Ariana J. Tadler, Kevin F. Brady & Karin Scholz Jenson	
	(14 pages)	143
Work	xplace Investigations From Start To Finish	
	A Roadmap For Challenging Workplace Investigations, Sue Ellen Eisenberg	
	(10 pages)	157
	Sample Investigator Retention Agreement, Sue Ellen Eisenberg (2 pages)	167
	Sample Letter: Retention For Investigative Services, Michelle R. Matheson	
	(2 pages)	169
	Sample Summary Of Internal Investigation, Michelle R. Matheson (2 pages)	171
	Capturing The Witness Statement, Keith Rohman & Elizabeth Rita (10 pages)	173
_		
	ing A Pregnancy Discrimination Case After <i>Young v. UPS</i> : Comparators, Statistics commodation	
	Proving A Pregnancy Discrimination Case After Young v. UPS PowerPoint®	
	Presentation, Brian East, Sharon Fast Gustafson & Liz Morris (39 pages)	183
	The ADA Amendments Act Of 2008—Including Final EEOC Regulations And	
	Guidance, And Current Case Law—May 1, 2016, Brian East (107 pages)	222
	Proving A Pregnancy Discrimination Case After Young v. UPS: Comparators, Statistics	000
	& Accommodation, Sharon Fast Gustafson (13 pages)	329
	Pregnancy Discrimination And Accommodation: Litigating Failure To Accommodate	
	Claims, Center For WorkLife Law, University Of California, Hastings College Of The	0.40
	Law (1 page)	342
The A	ABC's Of Litigating Wage & Hour Collective And Class Actions	
1110 2	ADO O OF Englishing Wago & Flour Concontro And Class Actions	
	The ABC's Of Litigating Wage & Hour Collective And Class Actions,	
	William Jhaveri-Weeks, Lawrence Morales, II, Michael D. Palmer & Anna P. Prakash	
	(21 pages)	343
inco: Strat	rporating The Newly Adopted Employment Regulations Into A Winning Litigation	
Strat	egy	
	Incorporating The Newly Adopted Employment Regulations Into A Winning Litigation	
	Strategy, Rachael Langston (11 pages)	364
	Regulatory Changes To The California Family Rights Act PowerPoint® Presentation,	
	Rachael Langston (22 pages)	375
	Incorporating The Newly Adopted Employment Regulations Into A Winning Litigation	
	Strategy, Noah D. Lebowitz (7 pages)	397
	California Code Of Regulations–Department Of Fair Employment And Housing,	
	Submitted By Brian C. Sperber (97 pages)	404
	Fair Employment & Housing Council—Amendments To The California Family Rights	
	Act Regulations, Submitted By Brian C. Sperber (36 pages)	501

Fair Employment & Housing Council—Amendments To The Fair Employment And Housing Act Regulations, Submitted By Brian C. Sperber (90 pages)	537
Representing The Executive Whistleblower	
Representing Executive-Level Whistleblowers, Lisa J. Banks (13 pages)	640
The Limitations Of Corporate Compliance, <i>The New York Law Journal</i> , Jordan A. Thomas (2 pages)	
Advocacy & Counsel For The SEC Whistleblower: A Primer For Employment Lawyers, BNA Daily Labor Report, Tammy Marzigliano & Jordan A. Thomas (4 pages)	659
Richard Moberly, Jordan A. Thomas & Jason Zuckerman (34 pages)	
SEC: Companies Cannot Stifle Whistleblowers In Confidentiality Agreements, Submitted By Jordan A. Thomas (2 pages)	
The NLRA Covers Nonunion Employees Too!	
The NLRA Covers Nonunion Employees Too!: The Right To Engage In Concerted Activity For Mutual Aid And Protection With Special Emphasis On Concerted Enforcement Activity, Craig Becker & Yona Rozen (42 pages)	701
Procedures For Filing An Unfair Labor Practice Charge With National Labor Relations Board, Thomas J. Gagliardo (5 pages)	
Attachment 1: NLRB Form–Charge Against Employer, Submitted By Thomas J. Gagliardo (2 pages)	748
Attachment 2: NLRB Form–Notice Of Designation Of Attorney Or Representative, Submitted By Thomas J. Gagliardo (1 page)	750
Thomas J. Gagliardo (1 page)	751
Thomas J. Gagliardo (1 page)	
Thomas J. Gagliardo (1 page)	753
Picking A Winner	
Picking A Winner, Cynthia Wilkinson, Randolph H. Freking, Darold Killmer & Subhashini Bollini (15 pages)	
Attachment 1: Short Client Intake Sheet (2 pages)	771
Attachment 4: Employment Questionnaire (15 pages)	780
Attachment 6: Consent To Perform Criminal History Background Check (2 pages)	798
Attachment 7: Social Media Agreement (2 pages)	800

Attachment 8: Attorney	y Client Social Networking Disclaimer (4 pages)	802
Attachment 9: Docume	ent Checklist-Employment Cases (1 page)	806
	ant Dates & Names (8 pages)	
	yment Damages Worksheet (5 pages)	
	ary Harm Checklist (3 pages)	
Attachment 13: Engag	pement Letter (6 pages)	823
Planning For A Wage & Hour To	rial—Starting With Discovery	
	our Trial—Starting With Discovery, James M. Finberg,	
George A. Hanson, Jason	C. Marsili & Cornelia Dai (18 pages)	829
Attachment 1: Tyson F	Foods, Inc. v. Bouaphakeo et al. (U.S. Supreme Court)	- · -
(41 pages)	ETO LIOA LLO (ILO Occurt Of Associate For The Octob	847
	ev. FTS USA, LLC (U.S. Court Of Appeals For The Sixth	000
	our Trial—Starting With Discovery PowerPoint®	000
	inberg, George A. Hanson, Jason C. Marsili & Cornelia Dai	
		909
, ,		
Advanced PAGA Issues		
Some Procedural Conside	erations For Recovery Of Expert Costs & Fees In PAGA	
Cases, Thomas M. Diache	enko (1 page)	920
	v. PAMA, Inc. Second Amended Judgment After Trial,	
	M. Diachenko (6 pages)	921
The Ins And Outs Of Litiga	ating A Representative Action Under The Private Attorneys	
General Act (PAGA) Power	erPoint® Presentation, Cynthia L. Rice (35 pages)	927
	neral Act Of 2004 (PAGA): Most Of The Questions,	000
Some Of The Answers, M	ichael D. Singer (24 pages)	962
What I Wish I Knew When I Was	s Starting Out As A Plaintiffs' Employment Lawyer	
Top Ten Tips: Discovery A	And Depositions Top Ten Lists, Elissa J. Hobfoll (4 pages)	986
	hitney Judkins (2 pages)	990
	ducting Intake Of Prospective Clients & Successfully	
	Vith Opposing Counsel, Nina T. Pirrotti (7 pages)	
Top Ten Summary Judgm	ent Pointers, Brian T. Rochel (3 pages)	999
Forensic Mental Health Experts	s: Understanding Yours & Undercutting Theirs	
Forensic Mental Health Ex	xperts: Understanding Yours & Undercutting Theirs	
	n, Kelly Brandon, Paige Fiedler, Louise Fitzgerald, Ph.D.	
& Heather Newsom Leona	ard (10 pages)	1002
FRIDAY, JUNE 24, 2016		
Using The Restatement Of Emp	ployment Law To Your Client's Advantage	
Restatement Of Employm	ent Law PowerPoint® Presentation, Professor Samuel	
		1012

Using The Restatement Of Employment Law To Your Client's Advantage, Joseph D. Garrison (7 pages)	1026
Taking Rule 30(b)(6) Corporate Depositions: Strategies For Success	
Taking Rule 30(b)(6) Corporate Depositions: Strategies For Success PowerPoint® Presentation, Walt Auvil, Cyrus Mehri & Robert L. Schug (31 pages)	1033
Regarding 30(b)(7) Deposition, Walt Auvil (12 pages)	1064
(1 page)Using 30(b)(6) Depositions To Win Equal Employment Opportunity Class Actions:	1076
A Few Practical Tips, Cyrus Mehri (3 pages) A Beginner's Guide To Rule 30(b)(6) Depositions: Ten Common Questions Answered, Robert L. Schug (9 pages)	
Advocating For The Rights Of LGBT Employees	1000
Laws Barring Sex Discrimination Also Protect Sexual Orientation,	
Ria Tabacco Mar (6 pages) Employee Benefits Issues Affecting Employees In Same-Sex Marriages, Civil Unions,	1089
And Domestic Partnerships, Teresa S. Renaker & Julie Wilensky (35 pages)	1095
Teresa S. Renaker, Jacob Richards & Julie Wilensky (19 pages)	
(39 pages)	1149
How To Win Harassment, Discrimination & Punitive Damage Claims Without An HR Expert	
How To Win Harassment, Discrimination & Punitive Damage Claims Without An HR Expert, Nancy Bornn (19 pages)	1188
How To Win Harassment, Discrimination & Punitive Damage Claims Without An HR Expert PowerPoint® Presentation, Scott R. Ames, Nancy Bornn & Amy Oppenheimer	
(54 pages)	1207
Hot Topics In Wage & Hour Law	
Hot Topics In Wage & Hour Law, David Borgen, Richard J. (Rex) Burch, Catherine K. Ruckelshaus & Christine E. Webber (36 pages)	1261
Winning Pre- And Post-Trial Motions	
Winning Post-Trial Motions PowerPoint® Presentation, Darci E. Burrell (16 pages)	
Permanente Medical Group's Motion For New Trial (30 pages)	1327

Attachment 2: Plaintiff Patricia Metzner's Opposition To Defendant The Permanente Medical Group's Motion For Judgment Notwithstanding The Verdict	
(22 pages)	1357
Attachment 3: Plaintiff Patricia Metzner's Memorandum Of Points And Authorities In	
Support Of Motion For Statutory Attorneys' Fees (20 pages)	1379
Attachment 4: Declaration Of Darci E. Burrell In Support Of Plaintiff's Motion For	4000
Statutory Attorneys' Fees (23 pages)	1399
Attachment 5: Plaintiff Patricia Metzner's Reply Memorandum Of Points And	1 100
Authorities In Support Of Motion For Statutory Attorneys' Fees (11 pages)	1422
(20 pages)	1/22
Winning Post-Trial Motions: Appellate Considerations PowerPoint® Presentation,	1433
Valerie T. McGinty (14 pages)	1453
Attachment 1: Bullet Proof Verdict Form (1 page)	
Attachment 2: New Trial Motion (1 page)	
Attachment 3: The Complaint And The Verdict Form: Don't Let Them Scuttle Your	
Case (7 pages)	1469
Attachment 4: Protect The Record (1 page)	
Attachment 5: The Motions For New Trial: When To Make It And How To Win It	
(12 pages)	1477
Winning Your Case Before Trial With Pre-Trial Motions, Jayme L. Walker	
(6 pages)Winning Your Case Before Trial With Pre-Trial Motions PowerPoint® Presentation,	1489
Winning Your Case Before Trial With Pre-Trial Motions PowerPoint® Presentation,	
Jayme L. Walker (15 pages)	1495
Attachment 1: Plaintiff's Opposition To Defendants' Motion In Limine No. 3 To	
Exclude 1) Evidence Or Argument Regarding The City's Policies And Procedures	
For Whistleblower Complaints Of Retaliation 2) The Testimony Of Plaintiff's Expert	
Mary Management And 3) Any Argument That The City Had A Legal "Duty" To	4540
Investigate Plaintiff's Claims Of Retaliation (13 pages)	1510
Attachment 2: Plaintiffs' Motion In Limine No. 1 To Exclude Irrelevant And	4500
Prejudicial Information Regarding Plaintiff James' Performance (4 pages)	1523
Attachment 3: Plaintiff's Opposition To Defendants' Motion <i>In Limine</i> No. 2 To Exclude The Testimony Of Witnesses That Big Boss Retaliated Against Them Or	
Others (6 pages)	1527
Others (o pages)	1321
Recent Developments In Representing Federal Employees: EEOC's Management Directive 110	
Recent Developments In Representing Federal Employees: EEOC's Management	
Directive 110 PowerPoint® Presentation, Cathy A. Harris, Joseph V. Kaplan & Victor	
	1533
Voloshin (12 pages)Recent Developments In Representing Federal Employees: EEOC's Management	
Directive 110, Cathy A. Harris (29 pages)	
Revised Management Directive 110 Reference Guide, Victor Voloshin (8 pages)	1574
ESI On The Offense: Holding Defendants' Feet To The Fire	
Seize The Advantage: Getting High-Value Electronic Information Early And Minimizing	
Your Time And Expense, Sonal Bhatia (7 pages)	1582
DIY E-Discovery: How To Take Control Of eDiscovery In Your Cases, Jeff Kerr	4500
(3 pages)	1589

eDiscovery Dictionary, Jeff Kerr (5 pages)	
Going Native: The Importance Of Native Files In eDiscovery, Jeff Kerr (3 pages)	1597
Best Practices For ESI Discovery, Trang Tran (10 pages)	
Attachment 1: The Case For Cooperation, The Sedona Conference	
(29 pages)	1612
Attachment 2: The Sedona Principles: Best Practices Recommendations &	
Principles For Addressing Electronic Document Production (Second Edition, June	
2007)	
(104 pages)	1641
Attachment 3: The Sedona Guidelines: Best Practices Addressing Protective	1041
y	1715
Orders, Confidentiality & Public Access In Civil Cases (March 2007) (75 pages)	1743
There's No Smoking Gun: Proving Discrimination & Retaliation By Pretext	
There's No Smoking Gun. Froving Discrimination & Retailation by Fretext	
There's No Smoking Gun: Proving Discrimination & Retaliation By Pretext,	
	1920
Patricia A. Barasch (32 pages)	1020
There's No Smoking Gun: Proving Discrimination & Retaliation By Pretext,	4050
Susan M. Coler (28 pages)	1852
Attachment: Extricating Title VII From The Quagmire Of McDonnell Douglas: The Plain	
Language Solution, Leslie L. Lienemann & Celeste E. Culberth, Culberth & Lienemann,	
LLP (13 pages)	1880
There's No Smoking Gun: Proving Discrimination & Retaliation By Pretext,	
Professor Michael L. Foreman (28 pages)	1893
Jury Selection For Employment Cases	
The Art Of Jury De-Selection, Sonia Chopra (6 pages)	1921
Jury Selection: What To Ask And How To Ask It PowerPoint® Presentation, Chopra	
Koonan Litigation Consulting (25 pages)	1927
Jury Selection For Employment Cases PowerPoint® Presentation, Andrew Dwyer	
(17 pages)	1952
Selecting An Ideal Jury, Harry Plotkin (20 pages)	1969
Co-Counseling & Cooperating With Other Plaintiffs' Lawyers (Or Playing Nice In The	
Sandbox)	
Co-Counsel Agreement, Submitted By Kelly M. Dermody (6 pages)	1989
Co-Counsel Agreement [Contract/Discrimination/Wage & Hour] Litigation,	
Submitted By Kelly M. Dermody (3 pages)	1995
, , , , , , , , , , , , , , , , , , , ,	
Delivering Dynamic Opening & Closing Statements	
Delivering Dynamic Closing Statements, Kathleen L. Bogas (9 pages)	1998
Dynamic Opening & Closing Statements PowerPoint® Presentation, Lawrance A.	
Bohm (115 pages)	2007
Words Matter: How To Craft A Winning Opening Statement By Effective Word Choices	
Alicia K. Haynes (6 pages)	
Delivering Dynamic Opening Statements, Arash Homampour (3 pages)	
2 3.17 3.1119 Distriction Opening Statements, Audentificating of pages,	2 120

Mediating Your Way To Success Mock Mediation Fact Pattern, Bassis Mediation	0404
(1 page) Mediating Your Way To Success Mock Mediation Simple Risk Analysis	
(1 page)	2132
Why Is Mediation's Joint Session Disappearing?, Lynne S. Bassis (5 pages)	
The Key Discovery Battles In Employment Law Litigation	2100
Key Discovery Battles In Employment Law Litigation, James H. Kaster (19 pages)	2146
Accommodating Religious Beliefs & Practices In The Workplace	
Accommodating Religious Beliefs & Practices In The Workplace: Speech And Proselytizing, Amy L. Coopman (7 pages)	2165
Accommodating Religious Beliefs & Practices In The Workplace—A Short	
Retrospective On The Early Years: 1965–1986, Charles E. Guerrier (7 pages)	2172
FLSA Basics: Exemptions Galore & Much, Much More!	
FLSA Basics: Exemptions Galore & Much, Much More!—Issue Spotting FLSA Violations, Todd F. Jackson, Troy L. Kessler & Jahan C. Sagafi (16 pages)	2179
Kessler, Jahan C. Sagafi & Rachhana T. Srey (28 pages)	2195
Age Discrimination In Focus	
Age Discrimination In Focus, J. Gary Gwilliam (15 pages)	2223
Age Discrimination In Focus, J. Gary Gwilliam & Daniel B. Kohrman (18 pages) Cutting-Edge Issues In Age Discrimination & The Aging Workforce,	
Daniel B. Kohrman (27 pages)	2256
Significant Age Discrimination Decisions: July 2015–May 2016, J. Gary Gwilliam &	2200
Daniel B. Kohrman (9 pages)	2283
Attachment: Taffee v. Drake Opinion & Order (14 pages)	
Deferred Compensation Issues In Negotiating Severance Agreements	
Negotiating Severance Agreements With Multi-Faced Compensation, Margo	
Hasselman (7 pages)	2306
Negotiating Deferred Compensation Issues in Employment, Compensation, And	
Severance Agreements, Wayne N. Outten (4 pages)	2313
409A Tax Issues In Employment Agreements and Severance Pay, Susan P. Serota	
(17 pages)	2317
409A Tax Issues In Employment Agreements and Severance Pay PowerPoint®	000.4
Presentation, Susan P. Serota (17 pages)	2334
Deferred Compensation Issues In Negotiating Severance Agreements, David J. Weiner (3 pages)	2351
Deferred Compensation Issues In Negotiating Severance Agreements PowerPoint®	
Presentation, David J. Weiner (10 pages)	2354

Representing Undocumented/Non-Resident Employees In Settlements,	2264
M. Nieves Bolanos (3 pages)Successfully Representing Undocumented Workers In Employment Litigation,	2304
Justin D. Cummins (13 pages)	2367
Using Protective Orders When Representing Undocumented Workers, Christopher Ho	2301
(4 pages)(4 pages)	2380
Attachment 1: Sample Employee Letter To Employer Refusing To Update Social	2000
Security Number (California) (1 page)	2384
Attachment 2: Sample Letter To Employer Threatening Reporting To ICE	200 1
(2 pages)	2385
Attachment 3: Sample Letter To Employer Re SSA "No-Match" Letter	2000
(2 pages)	2387
Attachment 4: Sample Employee Letter To Employer Engaging In Unlawful	
Reverification/Document Abuse (California) (1 page)	2389
Attachment 5: Sample Letter To Employer Engaging In Unlawful	
Attachment 5: Sample Letter To Employer Engaging In Unlawful Reverification/Document Abuse (California) (2 pages)	2390
Attachment 6: Sample Letter To Employer Engaging In Unlawful	
Reverification/Document Abuse (2 pages)	2392
Attachment 7: Sample Letter To Employer Engaging In Unlawful	
Reverification/Document Abuse (3 pages)	2394
Attachment 8: Sample Letter To Employer Engaging In Unlawful Reverification	
(2 pages)	2397
Attachment 9: Sample Letter To Employer Refusing To Accept Updated Social	
Security Number (3 pages)	2399
Attachment 10: Sample Letter To Employer Retaliatorily Requiring Completion Of I-	
9 Form (1 page)	2402
Attachment 11: California's New Worker Protections Against Retaliation Fact	
Sheet, National Employment Law Project (October 2013) (4 pages)	2403
CATUDDAY HINE OF COAC	
SATURDAY, JUNE 25, 2016	
Best Practices For Taking & Defending Depositions	
best Fractices For Taking & Defending Depositions	
Taking Depositions: Taking Care Of Business While "Coloring Outside The Lines,"	
Kathleen Cahill (4 pages)	2407
Taking And Defending Depositions—Tips For New NELA Attorneys, Renuka V. Jain	
(7 pages)	2411
Taking And Defending Depositions—Tips For New NELA Attorneys PowerPoint®	
Presentation, Renuka V. Jain (17 pages)	2418
What New NELA Attorneys Need To Know About Defending Depositions,	
David L. Lee (11 pages)	2435
Winning Strategies When Your Client Is Forced To Arbitrate	
How To Win In Arbitration Dowar Daint® Proportation Katherin Develott Dialogo	
How To Win In Arbitration PowerPoint® Presentation, Kathryn Burkett Dickson,	
The Honorable Elaine Gordon, Shannon Liss-Riordan & Paul J. Lukas	0440
(13 pages)	2446
Corporation (6 pages)	2450
ουτρυταιίστη (ο μαθες)	2409

Attachment 2: Agenda For Final Pretrial Conference (4 pages)	2465
The Honorable Elaine Gordon (Retired) (3 pages)	2469
Listening Between the Lines: Emotion Based Valuation Factors,	
The Honorable Elaine Gordon (Retired) (4 pages)	2472
Arbitration Issues And Strategies For Plaintiffs' Class Action Lawyers,	0.470
Shannon Liss-Riordan (21 pages)	2476
If You Want To Defeat Summary Judgment Or Win At Trial, Think Like A Journalist	
Unfolding The Human Drama—Presenting The Plaintiff's Case-In-Chief, Dennis E.	
Egan (10 pages)	2497
Attachment: Greater Kansas City Laborers Pension Fund, et al. v. Al Muehlberger	
Concrete Company, LLC, Defendant's Proposed Findings Of Fact And Conclusions Of Law (31 pages)	2507
If You Want To Defeat Summary Judgment Or Win At Trial, Think Like A Journalist,	2307
Chip Muller (19 pages)	2538
Who Is An Employer & Who Is An Employee?	
Who Is An Employer And Who Is An Employee?, Rachel Bien, James Kan, Peter Sung Ohr & Douglas M. Werman (17 pages)	2557
Overcoming The <i>Harris</i> Defense	
Overcoming The Harris Defense PowerPoint® Presentations (63 pages):	
Overcoming The Harris Defense, Kelly A. Knight	2574
What, Me Worry? And You Shouldn't Either About Harris v. Santa Monica,	0040
Craig T. Byrnes Using <i>Harris</i> To Your Advantage, Barbara E. Figari	2620
Osing Hams to tour Advantage, Barbara E. Figan	2020
Ethical Pitfalls For Plaintiffs' Employment Lawyers	
Ethical Pitfalls For Plaintiffs' Employment Lawyers, David L. Kern, Gary Noah Savine & Carla D. Brown (16 pages)	2637
The Year In Review: Significant Developments In Employment Law	
Trends In Employment Discrimination Law, Richard T. Seymour (100 pages)	2653
Directory Of Moderators & Speakers (9 pages)	2753
Biographies Of Moderators & Speakers (25 pages)	2762