

LittlerTM

**LITTLER MENDELSON
THE EXECUTIVE EMPLOYER® CONFERENCE**



WORKPLACE 3.0:
**Responding to Innovative Forces
Changing the Workplace**

May 7–9, 2014 ▪ Phoenix, Arizona



WORKPLACE 3.0:

Responding to Innovative Forces Changing the Workplace

Over the past 100 years, the workplace has changed dramatically. We have experienced three distinct evolutionary phases:

Workplace 1.0 – The post-industrial transition from the rural, agrarian economy to the urban factory floor. Work was manual and repetitive, requiring minimal education or training. There was little regulation of how workers were treated, paid or accommodated. Pay was low, hours were long, working conditions were arduous, and child labor was common.

Workplace 2.0 – The progressive movement and organized labor pushed government to regulate the right to unionize, create wage-hour and workplace safety regulations, and enact a regimen of employment discrimination protections. An army of skilled, educated, white-collar workers introduced modern management and human resource principles. Efficiencies of scale and increased investment capital led to the rise of the national and, then, the global corporation.

Workplace 3.0 – Now, we may be facing the greatest change in the workplace since the industrial revolution, and our traditional management and human resource principles are being challenged on a daily basis by the disruptive forces impacting our workplaces, including:

- Dramatic changes to the workforce itself. Many employees no longer expect careers at one or, even, two employers; they want to be free agents offering their services to multiple employers, preferring the flexibility of being contingent workers so they can work from home, have flexible work hours, take care of family obligations, and be located anywhere on the globe.
- The new generation of workers are digital natives and expect to be plugged in 24/7 – with work a parallel element of their lifestyle. The 8-hour workday and 40-hour workweek seem like vestiges of the factory floor, encumbering innovation and productivity. Many recoil at the notion of being classified as non-exempt, even though prevailing legal standards would classify them that way.
- Technology – personal smart devices, robotics and artificial intelligence – has changed the way workers perform their jobs and interact with each other. Indeed, some recent studies suggest that, within the next two decades, almost half of all jobs in America could be performed by software, robots and technology solutions not even invented yet.
- Likewise, through the use of technology the workplace is becoming “borderless” and businesses can seamlessly operate not only across the country but also across the globe. Technology also enhances the ability to “outsource” workplace functions that were traditionally handled in-house.
- Start-up companies with fewer than a dozen employees achieve billion-dollar valuations. Technology enables companies to develop and execute expansive business plans with significantly less capital and greater reliance on consultants and third-party service providers – including outsourced human resources, talent on-boarding and management.
- Social media can now connect every employee and every business. Perceived business misdeeds get magnified in the online megaphones of Twitter and Facebook, and a proud corporate global brand can be tarnished overnight. Social activists, union organizers and plaintiffs’ attorneys are standing by to exploit any corporate misstep. Social media also impacts how employees live (and document) their lives outside of the workplace.

(continued)



WORKPLACE 3.0: Responding to Innovative Forces Changing the Workplace

At the same time that these advances are poised to completely reinvent the workplace, vestiges of Workplace 2.0 remain and compound the labor and employment challenges facing human resources professionals and in-house counsel:

- A significant population of white-collar workers who entered the workforce during the boom years of Workplace 2.0 remain. They expect generous health and retirement benefits, seniority-based compensation, opportunities to advance through a traditional corporate hierarchy. Partly because of the economic impact of the Great Recession, they are not prepared, or cannot afford, to leave the workforce any time soon.
- Much of the recovery in jobs following the Great Recession has been in the service sector. These are low-wage jobs, typically staffed by workers without the training and skills necessary to advance to higher-wage technology and innovation-based jobs – a prime target for unions looking to increase their base, plaintiffs’ attorneys trolling for lucrative wage-hour class action litigation and activists seeking to advance living wage, paid family leave, immigration reform and other progressive legislation.
- Federal and state legislatures and administrative agencies continue to try traditional regulatory approaches – enhanced enforcement, stricter regulations, support for organized labor and the plaintiffs’ bar – without considering how the workforce has changed. As a result, employers must figure out how to manage the Workplace 3.0 workforce under an antiquated Workplace 2.0 legal paradigm.

The **2014 Executive Employer Conference** will explore the labor and employment challenges human resources professionals and in-house employment counsel confront in trying to adapt to the new world of work emerging in Workplace 3.0. We will look at innovative approaches to dealing with the health and welfare of employees, the employment law risks raised by emerging technologies, and the impact of globalization on corporate policies and procedures. We will also examine the existential change to the very definition of an “employee” – how does the rise of the contingent worker, the professional employer organization and online marketplaces for acquiring skilled talent change the Workplace 2.0 structures and policies we have relied upon for so long; how should companies deal with social media, including the threats to corporate reputations so easily tarnished in this new media age; and what new areas are now ripe for attack from the plaintiffs’ class action bar in Workplace 3.0 and how employers can armor themselves to protect against these threats. We will also consider how employers should respond to – and, perhaps, proactively engage with – the continuing federal and state efforts to apply Workplace 2.0 regulatory approaches to the vastly different workplace we confront today.

We invite you to join us for what is sure to be one of the most compelling Executive Employer programs yet.

[The Attorneys of Littler Mendelson](#)

WEDNESDAY / MAY 7

11:00 am	Pre-Conference Registration			
12:00 pm – 1:00 pm	Lunch Provided for all pre-conference attendees			
PRE-CONFERENCE SESSIONS				
1:00 pm – 5:00 pm	<p>Conducting Lawful Investigations: Establishing Effective Policies and Procedures for Workplace Investigations</p> <p><i>There will be an additional fee for this session.</i></p>	<p>Protecting Your Global Brand: Developing a Strategy to Address the Leading Employment Law Threats to Your Corporate Identity</p>	<p>Managing Litigation as a Business – Aligning Value and Costs of Litigation Services</p>	<p>The OFCCP’s Final Regulations for Veterans and Individuals with Disabilities</p>
PRE-CONFERENCE SUMMITS				
SUMMITS	RETAIL INDUSTRY	HEALTHCARE INDUSTRY	DIVERSITY & INCLUSION	CONSTRUCTION INDUSTRY
1:00 pm – 5:00 pm	<p>A Gathering of Leading Retailers to Discuss Significant Trends and Developments in Employment and Labor Law</p>	<p>Critical Issues Impacting Employers in the Healthcare Industry</p>	<p>Creatively Yours: Gaining the Edge & Embracing the Future of Diversity & Inclusion</p>	<p>Little’s Construction Industry Practice Group Presents: Important Issues for Construction Employers</p>
6:00 pm	Conference Registration			
6:30 pm	Reception and Welcome Dinner			



NAVIGATION TIP: Click session titles in the agenda table to jump to the description page

THURSDAY / MAY 8

7:00 am – 8:00 am	Breakfast				
8:00 am – 9:30 am	← General Session—The 2014 Littler Report →				
TRACKS	THE CHANGING WORKERS OF WORKPLACE 3.0	TECHNOLOGY RULES IN WORKPLACE 3.0	THE WORLD OF WORKPLACE 3.0	EMPLOYEE HEALTH MATTERS IN WORKPLACE 3.0	LITTLER'S WORKPLACE POLICY INSTITUTE UPDATE
9:45 am – 11:00 am	Hiring, Evaluating and Promoting Employees in the Age of Social Media and Big Data	Protecting Your Confidential Information in the Workplace and in the Cloud	Developing Global Codes of Conduct: Merging the Laws of Multiple Countries into an Integrated Corporate Code of Compliance	The Graying Workforce: Accommodating an Aging Workforce that Does Not Want to – or Cannot Afford to – Retire	The Players Have Changed: States and Cities Jump into Regulating the Workplace
11:15 am – 12:30 pm	The Impact of Generational Differences on Our Workplaces	The Future Has Arrived – It's Just Not Evenly Distributed: The Impact of Robotics, Automation and Artificial Intelligence on Our Workplaces	The Challenge of the Global Employee: Managing Ex-Pats and Navigating the Maze of Global Migration Requirements	No More Half Measures: Getting Serious About Controlling FMLA Abuse	The Diminishing Role of Congress: Administrative Agencies Now Set the Agenda
12:30 pm – 1:45 pm	← Lunch / The 2014 Employment Law Update →				
2:00 pm – 3:15 pm	Future of Contingent Workers: Employers, Employees and Independent Contractors – Oh My!	Employee Privacy in the Age of Big Brother Technology	Managing Cross-Border Cultural Differences	Employee Mental Health: An Employer's Responsibility?	DC Insider Report: Minimum Wage Wars, Immigration and the Midterm Elections – What Employers Need to Know
3:30 pm – 4:45 pm	The Remote Worker: Managing the Telecommuting, Flexible & Road Warrior Employee	Employment Law Challenges in the Sharing Economy	Managing Corporate Data Across Multiple Global Privacy Regimes	What Can Employers Do to Promote Employee Health? An Eye-Opening Look at Corporate Wellness Efforts	Labor's New Toolbox: Legislative and Regulatory Initiatives that Further Labor's Goals
5:00 pm – 6:00 pm	The Affordable Care Act Takes Effect: Critical Steps Employers Should Be Taking Now		A Sandy Beach and a Piña Colada? Think Again. The Challenges and Opportunities of Doing Business in Puerto Rico		
6:30 pm	Special Dinner Event <i>The continuation of a great Littler tradition</i>				



NAVIGATION TIP: Click session titles in the agenda table to jump to the description page

FRIDAY / MAY 9

7:00 am – 8:00 am	Breakfast			
TRACKS	CRITICAL TOPICS FOR IN-HOUSE COUNSEL	THE HUMAN RESOURCES WORKSHOP	LABOR RELATIONS ROUND-UP	EMPLOYMENT LAW 2014 – COMING TRENDS AND DEVELOPMENTS
8:00 am – 9:15 am	Adapt, Armor and Avoid: Checkmating the Next Big Thing in Wage and Hour Litigation	Don't Blame HR! – How to Teach Managers to Create a "Speak-Up" Culture	NLRB Update: A Conversation with NLRB Member Harry I. Johnson III	A Whistleblowing Whistle-Stop Tour: The Hottest Trends and Topics in Whistleblowing and Retaliation
9:30 am – 10:45 am	"Predictive Coding Has Solved the Problem of Electronic Discovery" – Not So Fast!	Blame the Lawyers? – HR Decisions Under the Microscope	Protecting Your Company's Property Rights in Today's Labor Environment	"The Gathering Swarm" – New Challenges in Wage and Hour Compliance
11:00 am – 12:15 pm	Arbitration Wars! The Plaintiffs' Bar Strikes Back – The Threat of Mass Arbitrations, Other Tactics and What You Can Do About It	Blame the New Workplace! Navigating HR Challenges Created by Workplace 3.0	Practical Tips to Navigating the Obama Administration's Labor Agenda for Union and Non-Union Employers	New Legal Risks in Paying Employees: Deferred Comp, Stock Options, Tips and Commission Plans
12:30 pm – 1:30 pm	← Ethical Issues for In-House Counsel →			



NAVIGATION TIP: Click session titles in the agenda table to jump to the description page



1:00 pm – 5:00 pm

Conducting Lawful Investigations: Establishing Effective Policies and Procedures for Workplace Investigations

Effective internal investigations of HR issues and corporate ethics violations have never been more critical. A flawed response can result in catastrophic liability, irreparable damage to an organization's goodwill and career destruction. Effective investigation practices and processes provide numerous advantages: reduced risk of liability exposure; decreased penalties for non-compliance; enhanced teamwork regarding investigation procedure and related policy implementation; and creation of a "Speak-Up" culture within your organization that encourages employees to raise legitimate concerns.

In light of the many challenges posed by Workplace 3.0, leading organizations have been re-examining their systems and practices regarding internal investigations. This session will examine key measures every organization should consider in instituting and/or maintaining an effective internal investigation process, including: an incident management system; written guidelines; appropriate attorney/client privilege application; whistleblower protections; "triage" practice and typical triggers; and documentation techniques from a recap to a report.

Using actors, several "real-life" compliance challenges will be depicted illustrating practical issues that can arise during an HR investigation. A panel of experienced attorneys will discuss measures for creating an effective investigation process that can withstand scrutiny in subsequent litigation while at the same time ensuring a successful "Speak-Up" culture that is compliant, cohesive and engaged.

Little's Conducting Lawful Investigations program is a perennial favorite and sell-out program at the annual Executive Employer Conference. We encourage you to enroll early for this program, as attendance will be limited.

There will be an additional fee for this session.

1:00 pm – 5:00 pm

Protecting Your Global Brand: Developing a Strategy to Address the Leading Employment Law Threats to Your Corporate Identity

In this special pre-conference session, experienced global practitioners and business leaders will lead an interactive discussion about critical matters that employers with multinational operations confront on an international level. Some issues to be discussed include:

- Managing reputational risks linked to the supply chain
- Drawing strategic plans to defend cross-border disputes
- Preventing local labor disputes from reaching global proportions

(continued)



1:00 pm – 5:00 pm

Managing Litigation as a Business – Aligning Value and Costs of Litigation Services

Led by experienced law department leaders and outside trial counsel, this interactive workshop provides an introduction to the groundbreaking “Managing Litigation as a Business” (MLB) initiative. Designed specifically for senior in-house counsel, MLB will help you manage your company’s risks, investigations, disputes and litigation in a more effective and cost-efficient, businesslike manner.

You will learn what other companies are doing to achieve better dispute management results at lower costs. You will have the opportunity to assess your law department’s knowledge, capabilities and skills against the 40+ Key Elements of the new “Managing Litigation Reference Model.” And, importantly, you will get feedback from peers in small break-out groups about criteria used in assessing and increasing the value of services purchased from preferred law firms and suppliers.

1:00 pm – 5:00 pm

The OFCCP’s Final Regulations for Veterans and Individuals with Disabilities

This session will begin with an overview of the new regulations and then drill down into some of the practical obstacles that organizations are encountering. We will discuss the disability survey, applicant self-identification, supplier pushback to the EO clause flow-down, and how other companies are planning to manage the annual subcontractor and vendor notice requirements, among other issues. Participants are encouraged to bring with them forms and samples that they have been developing, to engage in a dialogue about different ways of approaching these issues. We will also be sharing sample forms and working through sample language that companies may want to adapt for their own organization.

PRE-CONFERENCE SUMMITS

1:00 pm – 5:00 pm

RETAIL INDUSTRY

A Gathering of Leading Retailers to Discuss Significant Trends and Developments in Employment and Labor Law

Following the President’s recent State of the Union address, it is apparent that significant regulatory action impacting retailers continues to be on the horizon. There are also important trends emerging at the state level and in employment-related litigation. The Retail Industry Summit, sponsored by Littler’s Retail Industry Practice Group, offers industry-specific programming that will bring participants up to speed on these recent developments, provide insight into emerging trends and give practical guidance on how to respond to this changing legal landscape. The meeting will begin with a pre-summit lunch at noon and featured speakers addressing the reputational risks and branding issues associated with retailers that do business and have supply chain connections in emerging markets. Panel discussions will continue after lunch, featuring Littler attorneys, guest speakers and fellow Summit participants, with topics that include: recent legal developments in the area of racial profiling and the impact on company policies and enforcement practices; a Washington D.C. update; a discussion of the implications and legal risks inherent in the increased use of personal devices in the retail workplace; managing leaves of absence and religious accommodation issues; arbitration agreements; and the anticipated impact of NLRB activity on bargaining and organizing campaigns (including UFOs). The Summit will also provide ample opportunity for benchmarking questions and answers with and among participants and speakers in an interactive format.

(continued)



1:00 pm – 5:00 pm

HEALTHCARE INDUSTRY

Critical Issues Impacting Employers in the Healthcare Industry

At this Executive Summit, the full range of legal issues impacting healthcare employers will be addressed as Littler healthcare clients share best practices with industry peers and with Littler’s most experienced healthcare labor and employment lawyers. Participants will receive an update on recent legal developments on topics including the dramatic changes in whistleblower and wage and hour litigation against health systems and proposed regulatory actions that would have a significant impact on all healthcare employers. We will analyze employment law ramifications of restructuring health systems, including acquisitions and reductions in force. A labor update will provide essential information for healthcare employers, both organized and union-free. Additional areas to be discussed include price-fixing liability for compensation decisions, and reasonable accommodation obligations for healthcare employees who are disabled or who refuse certain assignments or directives due to religious beliefs.

1:00 pm – 5:00 pm

DIVERSITY & INCLUSION

Creatively Yours: Gaining the Edge & Embracing the Future of Diversity & Inclusion

In this unprecedented Executive Employer pre-conference summit, guest speakers and subject matter experts will treat participants to an engaging, multimedia and high-energy gathering dedicated to providing attendees with opportunities to: (1) learn, lead and leverage more effectively their organizations’ diversity and inclusion efforts; (2) increase their skills and knowledge on emerging trends, fresh perspectives, next practices, practical insights and legal developments; and (3) connect, converse and collaborate regarding their own experiences, challenges, strategies and progress.

Participants can look forward to a robust and interactive dialogue during this multi-paneled gathering on a host of issues that include:

- Envisioning and implementing Diversity & Inclusion in the Workplace 3.0 framework
- Designing and implementing diversity initiatives your outside counsel can live with
- Engaging executive leadership when your organization’s existing diversity strategies require minor or major renovations
- Devising tactics to remedy or prevent the onset of “diversity fatigue”

Who should attend this session: Chief Diversity Officers, D&I Directors, General Counsels, and HR business leaders and in-house counsel tasked with implementing D&I initiatives.

1:00 pm – 5:00 pm

CONSTRUCTION INDUSTRY

Littler’s Construction Industry Practice Group Presents: Important Issues for Construction Employers

This construction industry-focused summit will provide Littler attorney perspective and peer discussion on timely topics, including what the new NLRB organizing rules mean for construction employers; complying with expanded Davis-Bacon and state prevailing wage requirements; the new OFCCP affirmative action rules for government construction contractors; responding to the proliferation of apprenticeship mandates; and dealing with Project Labor Agreements.



8:00 am – 9:30 am

Exploring the Innovative Changes Impacting Workplace 3.0

The workplace is changing at a pace and scope not seen since the start of the industrial revolution. In-house counsel and HR professionals confront unprecedented challenges: the evolving nature of the workforce, accelerating technological change, the impact of globalization, and outdated labor and employment laws that have not kept pace with these dramatic changes. This year's Executive Employer General Session, **The 2014 Littler Report**, will begin our exploration of the changes that will dramatically impact our workplaces and affect how HR and employment law professionals address their job responsibilities in the coming years. First, we will provide an introductory survey of recent employment and labor developments, highlighting the key issues to be addressed during the Conference break-out sessions. We will then provide a number of thought-provoking presentations, featuring some of Littler's thought leaders, offering their take on the changes coming in Workplace 3.0. Finally, we will present **The 2014 Littler Report Initiative**, an insightful and deep exploration of critical issues that will impact the future of all of our workplaces.

The 2014 Littler Report will continue the rich tradition, started over 30 years ago, of providing Employer Conference attendees with a preview of the critical challenges and changes they will be addressing in the coming years. We invite you to join us for another exciting presentation of things to come as we fulfill our long-standing commitment to providing the employer community with the insight necessary to confront and adapt to the changes that will impact the workplace of the future.



9:45 am – 11:00 am

Hiring, Evaluating and Promoting Employees in the Age of Social Media and Big Data

Data rules! Potential employees expose their most personal details online – with Instagram photos, Vine videos, Facebook updates and more! Technology now enables us to closely monitor the comings and goings of our employees and also monitor their every keystroke and web visit. Big Data now promises to enable precise determinations as to whom to hire, what they will be good at and whether they are meeting their metrics. What are the employment law ramifications of applying social and computer science models to such fundamental questions as how to hire and evaluate employees for advancement? How do employers respect employee rights while still preserving their right to monitor, and control, employee social media and personal information? In this session, we will engage in a lively discussion of how Big Data is impacting the workplace now and in the near future.

11:15 am – 12:30 pm

The Impact of Generational Differences on Our Workplaces

The employees who have recently entered, and continue to enter, our workplaces are different from their predecessors in previous generations: they have different career goals, different expectations for job satisfaction and different measures of personal achievement. They are digital natives who expect their work to extend beyond the restrictions of a physical workplace and a 5x8 work schedule. They value future potential (i.e., equity) over immediate rewards. And they expect flexibility rather than rigid work rules. They favor self-direction over micro-management. And they want innovative, challenging work rather than repetitive tasks that simply get the job done.

So how do we adjust our workplaces to address the expectations of the millennial generation while continuing to manage a workforce that meets the expectations of our organizations? In this session, we will discuss the generational differences emerging in our workplaces and explore some practices that may help to reconcile these differences with our mission-critical organizational objectives.

2:00 pm – 3:15 pm

Future of Contingent Workers: Employers, Employees and Independent Contractors – Oh My!

Data shows that almost half of all new jobs created since 2008 are for contingent workers, including independent contractors, temporary employees or workers employed by third parties. Online exchanges now routinely connect “freelancers” with employers seeking to complete projects without adding to headcount. Contingent work is now pitting administrative agencies – particularly the taxing authorities – against new business models emerging in the Internet-based economy. In this compelling session, we will consider the future of contingent work, the changing nature of the employer-employee model and the challenges to contingent work posed by outdated regulatory structures.

3:30 pm – 4:45 pm

The Remote Worker: Managing the Telecommuting, Flexible & Road Warrior Employee

Increasingly, our employees are no longer working within the walls of our workplaces; they are working from home, traveling from facility to facility or from client to client. They are not tied to a physical desk, and they may rarely report to a common office. And they want to work on their own schedule – which, for some, means being connected 24/7. So how do we manage them? How do we monitor their attendance, performance and compliance with company policies and procedures? How do we control their access to critical company information? How and when do we regulate the extent to which our employees are “plugged in” to the workplace? And how do we ensure that we are meeting our compliance obligations, such as: providing them with safe working conditions, accurate compensation (do we have to pay an employee for responding to an email while on vacation?) and expense reimbursement (do we really have to cover the cost of their home internet service)?

9:45 am – 11:00 am

Protecting Your Confidential Information in the Workplace and in the Cloud

Increasingly, companies are relying upon cloud computing to share information with clients and connect their employees. Online services such as Box and DropBox proliferate and provide abundant options for moving corporate information outside of the organization, enabling employees to work remotely. But what are the legal implications of exposing potentially confidential and proprietary information outside of the company's firewalls? Companies are adopting internal social networks such as Yammer that encourage collaboration but also have the potential to create an unregulated forum rife with potential trade secret disclosures, weak security and unauthorized information sharing. In this session, we will consider what in-house counsel and HR professionals can do to alert their business constituents to the significant risks that arise from failing to consider the devastating consequences of having poor information security measures.

11:15 am – 12:30 pm

The Future Has Arrived – It's Just Not Evenly Distributed: The Impact of Robotics, Automation and Artificial Intelligence on Our Workplaces

By all accounts, the most significant change in our current workplace is the advent of advanced technology systems – whether labeled robotics, artificial intelligence or automation – that will change the very nature of our workplaces. Job losses will inevitably increase as cutting-edge computer advances encroach on traditional work functions. Current predictions assume that even knowledge-based jobs will soon be replaced by intelligent software. How will this impact the way we hire, train and advance our current workforce? Or does it mean we will face increasing reductions in force and reduced hiring in the future? In this session, we will examine how new technologies are impacting – perhaps irrevocably – the very nature of our workforce, and the myriad labor and employment challenges likely to arise as these changes occur.

2:00 pm – 3:15 pm

Employee Privacy in the Age of Big Brother Technology

Increasingly, technology enables us to exert remarkable control over our workforces. We can monitor employees' personal activity on social media and watch what they do at work through ubiquitous surveillance cameras and software that monitors their every keystroke. And just as web technology can monitor individuals' browsing preferences and stores can track and analyze customers' shopping behaviors, we can monitor employees' movement through and activities throughout the workday as well as outside of work. What legal issues arise from this new and unparalleled ability to so closely monitor our employees?

3:30 pm – 4:45 pm

Employment Law Challenges in the Sharing Economy

The newer generations of employees and entrepreneurs entering our workforces and creating our newest companies think and act differently. They do not own cars; they use car and bike shares to travel across town. They prefer crashing in someone's apartment or on someone's couch using Airbnb and Couchsurfing. And they value the networking opportunities and brainstorming that occur at incubators and other communal work hubs. Websites such as GitHub enable employees to collaborate through crowdsourcing on software development projects with people who may work for other companies – or for no company. What exactly do these trends mean for employers? How will you protect your confidential information and intellectual property when your employees are collaborating online or brainstorming innovative work projects in an incubator with non-employees? What liabilities may arise from your employees staying in a stranger's apartment on a business trip or traveling in an under-insured "shared" ride? What issues arise when your employees are denied access to these sharing economy resources because of their gender or race? What policies, protections and labor and employment practices do you need to implement to address your employees' increasing interaction with the sharing economy?

9:45 am – 11:00 am

Developing Global Codes of Conduct: Merging the Laws of Multiple Countries into an Integrated Corporate Code of Compliance

Global codes of conduct can be one of the most effective methods of corporate oversight for multinational corporations and can essentially tie together corporate values, diverse local cultures and divergent international standards into one compliance scheme. But creating and implementing a code that is relevant and enforceable for a global workforce can be challenging. How do you define your objectives and the covered responsibilities? What international standards need to be incorporated or considered? How broadly or specifically should it address supply chain issues, human rights and labor rights, environmental standards, and social, economic and community-related issues? This session will help organizations understand the scope of this undertaking and address steps that can be used to draft codes suitable for the organization's particular needs, industry, strategy and structure.

11:15 am – 12:30 pm

The Challenge of the Global Employee: Managing Ex-Pats and Navigating the Maze of Global Migration Requirements

This session will help you and your organization identify the issues to address and contingencies to anticipate when managing workers who move between countries. Careful planning allows employers to avoid the pitfalls that arise when multiple jurisdictions regulate different aspects of the employment relationship. The panelists will discuss: how to determine which law will apply, who will be the employer, what contract terms are appropriate for the assignment, which benefits rules apply, what compensation issues are likely to arise, how to plan for taxation of income and benefits, what security and safety concerns to anticipate, and what options exist for repatriation and termination.

2:00 pm – 3:15 pm

Managing Cross-Border Cultural Differences

As the world has become flat, decision makers in the U.S. increasingly make employment decisions affecting employees in foreign jurisdictions. In addition to dealing with the maze of foreign workplace laws, the cultural differences are profound. These cultural differences manifest themselves in many employment decisions – for example: (1) hiring (what are the culturally acceptable practices of inquiring and obtaining background information about a job applicant?); (2) managing performance (how do cultural differences influence employees' conduct and how to evaluate employee conduct from a U.S. perspective, but within their cultural context?); and (3) discipline (is certain conduct culturally acceptable and, hence, not a violation of a U.S.-styled policy, such as a rigid no-harassment policy?). The different cultural nuances and practices present challenges and increased risk for U.S. decision makers. In this session we will discuss steps your organization could take to understand and appreciate the different cultural issues when managing employees across borders and to reduce risk.

3:30 pm – 4:45 pm

Managing Corporate Data Across Multiple Global Privacy Regimes

With the rise of cloud computing, social media and Internet telephony, virtually any company can easily become a “multinational employer.” These same trends – and the Snowden affair – have caused countries around the world to enact or reinvigorate broad data protection regimes that pervade every aspect of the employment relationship. This panel will address the practical impact of global privacy regimes on managing a range of critical HR challenges – such as global recruiting, centralizing employee data in a global HRIS database, and cross-border investigations and civil discovery – and provide workable solutions for the global employer.



9:45 am – 11:00 am

The Graying Workforce: Accommodating an Aging Workforce that Does Not Want to – or Cannot Afford to – Retire

The aging American workforce is becoming a reality as Baby Boomers make decisions to extend their careers beyond the “usual” retirement age. Such decisions are influenced by financial factors, such as the recent recession, combined with extended life expectancy and the focus on healthier lifestyles. Employers will need to address numerous challenges, including intergenerational relationships, avoiding age discrimination claims, creative work options that may be appealing to older workers, such as flexible work schedules and telecommuting, and reevaluating retirement and benefit plans. Many employers also may face skill shortages, and older workers may be part of the solution by helping younger workers develop and improve mentoring skills. In this session, the speakers and attendees will engage in a dialogue to discuss various strategies to adapt to the aging workforce. Special guests joining in the dialogue will be **EEOC Commissioner Victoria Lipnic**, who has a special interest in this area, and representatives from companies that have been exploring creative solutions to deal with this ongoing challenge for the employer community.

11:15 am – 12:30 pm

No More Half Measures: Getting Serious About Controlling FMLA Abuse

Nothing exasperates business leaders and coworkers more than watching game-playing employees use FMLA to come and go as they please. And let’s face it, the “easy solutions” contained in the FMLA regulations, like recertification, do not solve the problem. There are options that provide employers with line-of-sight to the activities of these FMLA abusers. These options are legal and they work. This session will discuss those alternatives, in both legal and practical terms, and prepare you to offer real solutions when faced with an apparent FMLA abuse problem.

2:00 pm – 3:15 pm

Employee Mental Health: An Employer’s Responsibility?

Employers have long recognized the obvious effect on productivity and cost of employee physical illnesses: absenteeism, reduced work performance, disability claims, higher healthcare costs and adverse morale. But what about the effect of mental illnesses – particularly illnesses that develop over time and often in the shadows? By some accounts, depression alone costs over \$36 billion in lost work productivity and exacts a huge toll on employee quality of life. Mental illnesses that result in incidents of workplace violence or employee suicide typically affect the workplace in ways that go well beyond economic loss. What can or should your organization do to address and improve employee mental health? How can you prepare for the issues that will arise and develop measures that will best assist your employees and protect your workplace? In this session, we will discuss and consider the best steps for employers to take to address mental health issues – and threats – that often emerge in our workplaces.

3:30 pm – 4:45 pm

What Can Employers Do to Promote Employee Health? An Eye-Opening Look at Corporate Wellness Efforts

Proponents of employee wellness plans promise reduced costs for employee medical plans and increased employee health outcomes, but rarely discuss the legal challenges of corporate wellness. In this session, our panel, which will include in-house counsel with hands-on experience, will discuss the design, implementation, and legal implications of corporate wellness programs as well as look at some new types of innovative wellness programs. We will discuss how to design your program to comport with the “HIPAA wellness” regulations finalized in 2013, as well as “best practices” for employee messaging. In addition, we will discuss the recent legal challenges wellness programs face under the ADA and GINA. Finally, the panel will provide a wellness plan “check-up” for you to assess your current program to determine what exposure your plan may have under ERISA and the HIPAA privacy regulations.

9:45 am – 11:00 am

The Players Have Changed: States and Cities Jump into Regulating the Workplace

With a divided Congress, workplace legislation has been stalled at the federal level. However, state and local governments are stepping in to fill the vacuum created by the legislative logjam in Washington, D.C. Across the country, state and municipal policymakers are enacting a broad array of new laws impacting the workplace and employee privacy. State legislators are considering and passing laws related to employee use of medical marijuana, social media and concealed weapons. They are also introducing and passing laws prohibiting employers from considering an employee's criminal background, credit history, sexual orientation, gender identity or marital status. This session will review the latest changes in state and local workplace laws, developing trends, and what these changes mean for your organization and your employees.

11:15 am – 12:30 pm

The Diminishing Role of Congress: Administrative Agencies Now Set the Agenda

The playing field for policymaking in Washington, D.C. insiders who will discuss election year politics and review the latest wage and hour, healthcare and immigration proposals has shifted in recent years from a gridlocked Congress to an active executive branch. While Congress remains stalemated on many of the country's most important economic issues, the Obama Administration has turned its attention to the administrative agencies to pursue its workplace policy agenda. Come learn about the latest federal agency actions at the Equal Employment Opportunity Commission under its new strategic enforcement plan and at an emboldened Department of Labor under new leadership. This session will explore recent developments and those on the horizon at the EEOC and DOL, including the Occupational Safety and Health Administration's workplace safety requirements for employers, developments at the Wage and Hour Division, and the Office of Federal Contractor Compliance Programs' sweeping changes to federal contractor affirmative action obligations for covered veterans and individuals with disabilities.

2:00 pm – 3:15 pm

DC Insider Report: Minimum Wage Wars, Immigration and the Midterm Elections – What Employers Need to Know

Occupy Wall Street vs. the One Percent. CEO salaries vs. worker wages. The issue of "inequality" is capturing headlines from coast to coast. The new year has also brought renewed hope for immigration reform in Congress, as worker and business groups call for new laws governing access to talent, employment verification and citizenship. Add the tension of a midterm election year, and this confluence of politics and policy could mean big changes and dramatically higher costs of doing business for employers. Come hear from Washington, D.C. insiders who will discuss election-year politics and review the latest wage and hour, healthcare and immigration proposals.

3:30 pm – 4:45 pm

Labor's New Toolbox: Legislative and Regulatory Initiatives that Further Labor's Goals

Organized labor is looking beyond Congress and traditional organizing tools to achieve its goals. In the face of high unemployment and declining union participation rates, organized labor continues to push an activist agenda in Washington, D.C. In this session, attendees will learn about the front-burner proposals in Congress, as well as at the National Labor Relations Board and Department of Labor, to promote union organizing, boost wages and expand healthcare benefits. With this expanded toolbox, organized labor is poised to benefit from dramatic changes in labor relations policy. Learn how these changes could impact your organization and how you can best prepare your organization for the future.



12:30 pm – 1:45 pm

Lunch / The 2014 Employment Law Update

A perennial favorite at the Executive Employer Conference, our annual Employment Law Update provides a unique opportunity to understand the latest court cases and other 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 who 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.

5:00 pm – 6:00 pm

The Affordable Care Act Takes Effect: Critical Steps Employers Should Be Taking Now

Healthcare Reform continues to be one of the most pressing issues on the minds of employers in 2014. As uncertainty about the implementation of the Affordable Care Act persists, employers are facing critical decisions about their benefits and business strategies. Between the employer “play-or-pay” mandate, slated to become effective in 2015 for employers with 100 or more full-time employees, and a multitude of other requirements and fees, the ACA’s reach is widespread. This special session will review the myriad ways in which the ACA affects employers and will discuss how employers can prepare for the ACA’s impact in 2014 and beyond.

5:00 pm – 6:00 pm

A Sandy Beach and a Piña Colada? Think Again. The Challenges and Opportunities of Doing Business in Puerto Rico

Yes, Puerto Rico is a rare combination of Old World charm, exotic island and modern U.S. territory. Yes, Puerto Ricans are U.S. citizens, use the U.S. dollar, and, as Puerto Rico falls within the U.S. federal system, the Island is subject to the U.S. Constitution and most federal laws and regulations. Yes, Puerto Ricans live in perpetual summer. Doing business in Puerto Rico from an employment perspective, however, is not always a stroll on a sandy beach. Littler Global attorneys from Puerto Rico will provide you with an opportunity to navigate the uncharted waters of the island’s labor and employment structure that will better prepare you for the challenges and opportunities that are unique to doing business in Puerto Rico.



8:00 am – 9:15 am

Adapt, Armor and Avoid: Checkmating the Next Big Thing in Wage and Hour Litigation

Despite some predictions of their imminent demise due to class action waivers and arbitration, wage and hour class and collective actions continue to proliferate aided by regulatory agencies, labor unions and employee advocates. This session predicts the “Next New Thing” in wage and hour litigation and provides practical guidance to the nimble employer on how to avoid becoming the latest settlement statistic in the wage and hour wars.

9:30 am – 10:45 am

“Predictive Coding Has Solved the Problem of Electronic Discovery” – Not So Fast!

Predictive coding, also known as Technology Assisted Review, has been heavily promoted as a budget-slashing “solution” for the cost-prohibitive challenges of eDiscovery. Properly managed, TAR can add value. But despite the hype, TAR is not an instant panacea. In reality, implementation of predictive coding workflows and tools requires a significant investment of resources. As a leading new study concluded: “[Y]ou can’t turn discovery over to robots – humans are still the most vital component of the project.” If you want to know more about this technology and how it can be deployed in your cases, this session is for you. We will cover TAR basics (including a working demonstration); differences among the leading approaches to TAR; legal risks and challenges of using TAR; and critical considerations for using TAR in your cases to achieve its intended purpose – saving money.

11:00 am – 12:15 pm

Arbitration Wars! The Plaintiffs’ Bar Strikes Back – The Threat of Mass Arbitrations, Other Tactics and What You Can Do About It

The plaintiffs’ bar has taken one blow after another from U.S. Supreme Court decisions upholding arbitration agreements and class action waivers, requiring parties to arbitrate disputes on an individual, non-class basis. The stakes are enormous, with multi-million dollars at risk and enormous class settlements allowing plaintiffs’ lawyers to reap huge fees. Plaintiffs’ lawyers are not going down without a fight, and are attempting to engage in a number of tactics to frustrate the arbitration process. Among the tactics they are threatening are masses of individual arbitrations in response to employers who succeed in enforcing arbitration agreements with class action waivers. Their goal is to overwhelm employers in hopes that employers will roll back the clock to the “good old days” when class actions thrived – and easy money flowed to the lawyers bringing the cases. Do the new tactics work? What can employers do to protect themselves? In this break-out session, we will address the realities of the mass-arbitration threat and other tactics being employed and threatened by the plaintiffs’ bar; how to respond if the threats are carried out; and how an employer can protect itself before a case is even filed, through drafting and other techniques.



8:00 am – 9:15 am

Don't Blame HR! – How to Teach Managers to Create a “Speak-Up” Culture

Do you have a culture where employees are more comfortable complaining to coworkers instead of speaking up to HR and managers? Where managers do not raise an issue to HR in fear of “complicating” matters? Where no one raises an issue until it is too late, the landmine has exploded and you are stuck cleaning up the mess? Do you worry that your employees fear retaliation if they express concern?

This session will provide tools for you to teach managers how to create a “Speak-Up” environment, one in which important employee complaints are not withheld but, instead, are surfaced in the right way, at the right time, with the right people. In this session, we will examine each step in building a culture where you get the chance to resolve problems as they emerge. We will focus on:

- Earning the Moment of a Report: How managers create an environment where employees not only want to do the right thing but are comfortable expressing good-faith concerns
- Managing the Moment: Responding to a variety of types of employee concerns
- When the Moment Passes: How to avoid retaliation issues after a complaint is made, particularly when the complainant has performance issues
- Reexamining the perception of a valid concern

This will be a heavily interactive session, with role playing and video vignettes demonstrating effective and appropriate responses to the crucial moment of a raised concern.

9:30 am – 10:45 am

Blame the Lawyers? – HR Decisions Under the Microscope

How will your HR approach to challenges like adeptly handling the ADA’s interactive process and articulating the “right reasons” for discharge hold up once challenged? Through interactive scenarios and performances involving deposition testimony, cross-examination and other aspects of the adversarial process, this session will demonstrate how plaintiffs’ lawyers may use the litigation process to attack what you do in HR. We will emphasize how you can limit your compliance risks by taking appropriate approaches to HR processes and decision making.

(continued)

11:00 am – 12:15 pm

Blame the New Workplace! Navigating HR Challenges Created by Workplace 3.0

This interactive session will focus on some of the new challenges created by Workplace 3.0 through video vignettes and facilitated discussion of emerging issues created by developing technology, workforce diversity, veterans returning to the workplace, older employees working well past retirement age, and enhanced workplace safety requirements.

Points of focus will include:

- Technology in the workplace, including “Bring Your Own Device” (BYOD) realities, has become a nightmare for the security of company records, trade secrets and employees’ personnel data (e.g., illegal tape-recording and hidden video cameras in pens and eyeglasses can destroy any expectation of confidentiality in workplace meetings, counseling sessions or conversations);
- Cyber-stalking has taken workplace bullying and violence to a new and even more frightening level;
- Disabled veterans returning to the workplace and enhanced protections for victims of domestic violence/sexual assault, present a host of accommodation issues, requirements and challenges;
- Guns in the workplace (at last count 22 states now grant employees the right to bring guns onto company parking areas) create significant security and workplace violence prevention problems;
- An aging workforce that works past retirement age and is supervised by younger, less-experienced or newly-minted managers can present unique generational conflicts and the specter of individual or class action claims of age discrimination for any adverse personnel actions; and
- Rapidly expanding diversity enhances the workplace, but also can present interpersonal challenges such as differences in language, religion, ethnicity, age, and gender identity.



8:00 am – 9:15 am

NLRB Update: A Conversation with NLRB Member Harry I. Johnson III

Harry Johnson was confirmed by the U.S. Senate last August as one of the Republican members of the National Labor Relations Board, in a confirmation process that has restored the Board to its full complement of five members for the first time in a decade. The new Board has started issuing significant decisions, and it is anticipated that several important cases will be decided prior to the Executive Employer conference. In addition, a Board majority has recently reissued “quickie election” regulations that are intended to expedite NLRB representation elections, replacing earlier regulations that were invalidated by the federal courts. These regulations are expected to have a serious impact on employers, especially when combined with the Board’s earlier decision approving “micro” bargaining units. Member Johnson will join Littler attorneys in a conversation about these anticipated developments, providing our clients and guests with a unique perspective on this key federal agency.

9:30 am – 10:45 am

Protecting Your Company’s Property Rights in Today’s Labor Environment

With an increase in alternative union organizing tactics and a sharp rise in the number of unfair labor practice charges filed against non-union employers, both non-union and unionized employers need to understand the current Obama NLRB’s position on employee and non-employee access to company property. Employers will learn how to best protect their property interests, including their physical premises, computer systems, bulletin boards, telephones and copy machines, under current federal law, as well as applicable state trespass laws. This session will include a discussion of the effectiveness of employer policies in protecting company property interests and regulating the workforce in conformity with current labor law. In addition, the session will explore off-duty and subcontractor employee access, as well as non-employee access to company premises for organizing purposes, demonstrations, bannerings, OSHA visits and other reasons.

11:00 am – 12:15 pm

Practical Tips to Navigating the Obama Administration’s Labor Agenda for Union and Non-Union Employers

The National Labor Relations Board’s reach continues to expand, wrapping both union and non-union employers in a regulatory scheme that extends over almost every facet of the workplace. Drawing on recent NLRB cases and current employer experiences, Littler attorneys will provide practical and creative solutions to deal with the Administration’s regulation of today’s workplace, including employee handbooks and policy issues, union organizing and the Administration’s new rules on expedited elections, and the DOL’s impending “persuader” regulations.

8:00 am – 9:15 am

A Whistleblowing Whistle-Stop Tour: The Hottest Trends and Topics in Whistleblowing and Retaliation

From the “Snowden Effect” to multi-million dollar bounties, whistleblowing is bigger, badder and broader than ever before. Inquiring employers want to know – are the courts and enforcement agencies going to pull the brake on this runaway train? Find out in this program covering the most important recent cases and developments in whistleblowing and retaliation litigation, including:

- The U.S. Supreme Court’s first Sarbanes-Oxley case and what it might mean for the millions of privately held companies that do business with publicly traded corporations;
- A widening split of authority on the question “who is a whistleblower?” under Dodd-Frank;
- Dramatic expansions in the definition of “protected activity” at OSHA and in the federal courts;
- The real and potential impact of the U.S. Supreme Court’s decision in *Nassar* to apply a narrow standard of causation in Title VII retaliation cases;
- Applicability of U.S. whistleblower protections to U.S. employees working abroad;
- Potentially game-changing bounty awards issued by the SEC and other federal agencies;
- The use of nefarious tactics by whistleblowers, such as theft of confidential company information, as grounds for dismissal of whistleblower claims;
- Critical developments at the state level (we’re looking at you, California);
- Ethical, legal and practical issues presented by the growing trend of attorneys as whistleblowers; and
- New whistleblower protections under the Affordable Care Act – is this the next big thing?

9:30 am – 10:45 am

“The Gathering Swarm” – New Challenges in Wage and Hour Compliance

As the mid-point of 2014 approaches, the challenges posed by the current wage-hour landscape have become clearer. From expansion of mandatory sick leave on the East Coast, to the new premiums for missed heat recovery periods legislation on the West Coast, employers are facing a new surge of compliance obligations that is likely to gather in strength. Soon we are almost certain to have to do battle with the DOL’s “Right to Know” Rule and the Obama Administration’s labor enforcement agenda for the Administration’s final years.

This session will provide a review of the new challenges in wage-hour compliance and examine what we can expect in the coming months. Even short of new regulations, what might we expect from the DOL with its increasing emphasis on notice and process? What is on the wage-hour horizon around the U.S. that will require renewed focus on compliance programs and implementation of revised practices?

11:00 am – 12:15 pm

New Legal Risks in Paying Employees: Deferred Comp, Stock Options, Tips and Commission Plans

Employers have been pushing the envelope by establishing creative compensation arrangements and providing employees with incentives to perform well, achieve corporate goals and provide returns to the stakeholders of the organization. Many performance-related compensation arrangements are actually encouraged by the tax rules and other regulatory schemes. There are, however, regulatory traps that can trip up employers and employees. Some areas of particular concern include: performance-based compensation (deductibility under Code Section 162(m)); financial industry regulation and increased focus on improper and risky incentives; equity-based compensation and payments of incentive compensation on a deferred basis; and commission-based systems creating compliance issues under both tax and employment laws.



12:30 pm – 1:30 pm

Ethical Issues for In-House Counsel

This hour-long program, presented by Littler's General Counsel team, will address how to safely navigate some of the most common and challenging ethical issues facing in-house counsel in labor and employment matters, with an emphasis on the ABA Model Rules. Topics will include:

- Joint representation of the corporation and the individual manager/supervisor (ABA Model Rules 1.6, 1.7)
- Protecting the privilege when conducting investigations and when dealing with insured claims
- Ethical "competence" for in-house lawyers in today's digital age, especially considering the August 2012 amendment to Rule 1.1 of the ABA Model Rules of Professional Conduct and the new tools that can blur ethical boundaries
- Protecting confidential information/avoiding the inadvertent production of privileged information in discovery/gathering information ethically (ABA Formal Opinion 11-460)
- Ethical minefields of communicating with employees through social media websites
- A lawyer's obligations when outsourcing legal and nonlegal support services (ABA Formal Opinion 08-451)

CLE Ethics credit is pending approval.

MODERATOR:**Marguerite Walsh**

General Counsel, Littler Mendelson

PANELISTS:**George Wood**


Conflicts Counsel/Associate General Counsel, Littler Mendelson

Paul Weiner

National eDiscovery Counsel/Associate General Counsel, Littler Mendelson

Michael McGuire

Chief Information Security Officer/Associate General Counsel, Littler Mendelson



To register for the conference, please visit
www.ExecutiveEmployer.com/register
or call Juanita Treadway at 541.512.0223

REGISTRATION & HOTEL INFORMATION

Registration

To register for the conference, please visit www.ExecutiveEmployer.com/register or call Juanita Treadway at 541.512.0223.

Location and Hotel Accommodations

JW Marriott Phoenix Desert Ridge Resort & Spa
5350 East Marriott Drive • Phoenix, Arizona 85054

Littler is pleased to offer a discounted room rate for conference attendees of \$259 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. The main conference hotel often is sold out weeks prior to the conference, so please make your reservations early. We may have additional room blocks at nearby properties. Please contact Juanita Treadway for more information.

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 19 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 19 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.

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]).
