

EMPLOYMENT LAW

AUTHORITY Your Resource for Today's Hot Topics in Labor & Employment Law

Ogletree Deakins

PRACTICAL GUIDANCE FROM THE NEW NLRB RULINGS

by Brian E. Hayes, Ruthie L. Goodboe, and Thomas M. Stanek

Between September 26, 2017, when for the first time in nearly a decade Republicans controlled the majority at the National Labor Relations Board (NLRB), and December 16, 2017, when Chairman Philip Miscimarra's term expired and that majority temporarily ended, the Board issued several decisions with a big impact on employers. Below is a summary of the practical takeaways from a few of these new rulings.

The Boeing Company (Dec. 14, 2017) – As always, employer policies cannot infringe on the protected concerted activities of employees under Section 7 of the National Labor Relations Act (NLRA). [Under this ruling](#), the Board will now consider a challenged rule's potential impact on NLRA rights, then balance that potential impact against the employer's legitimate justifications for the rule.

- Review handbooks and policies to determine whether, as written (not as applied), they could potentially chill employees' Section 7 rights.
- Consider the legitimate justifications for those rules, prepare to articulate them, and consider including the reasons in the text of the rule, so that management and employees will understand the rule and the reasoning behind it.
- If there is a legitimate justification, consider litigating any unfair labor practice charges that challenge facially neutral policies.

Hy-Brand Industrial Contractors, Ltd. (Dec. 14, 2017) – A joint-employment determination once again requires proof that the putative employer (often the user of contract labor services) actually and [directly exercised](#) joint control over essential employment terms for the employees at issue.

- Do not assume that this ruling will protect employers from a joint-employment determination if their management teams have significant control over how contract labor employees do their jobs. For example, if the only difference between their employees and contract labor employees is their payroll, employers are still likely at risk.
- Review contract labor agreement provisions. Pay particular attention to indemnification and duty to defend and hold harmless language to make sure it protects the companies in the relationship, so that if joint employment arises, both parties understand whose obligation it is to cover associated costs.

PCC Structural, Inc. (Dec. 15, 2017) – The [NLRB will expand](#) a proposed bargaining unit to include employees who share a sufficient (not overwhelming) community of interest to warrant their inclusion for bargaining.

- Employers with a currently active case before an NLRB Region or the Board itself should consider seeking reconsideration of any adverse bargaining unit determination.
- More petitioned-for units will be contested through representation hearing procedures, possibly leading to longer time periods between petitions and elections.

IN THIS ISSUE

- P2** **D.C. DOWNLOAD**
Key Issues From Capitol Hill
- P3** **ROUNDUP**
State & International Hot Topics
- P4** **Q&A**
Are You Ready for the GDPR?
- P5** **SPECIAL FEATURE**
Guidance on Interns
- P6** **TOP 10**
HR Resolutions for 2018
- P7** **SPOTLIGHT ON**
Arbitration/ADR Practice Group

EMPLOYMENT LAW PRACTICE GROUP NAMED A PRACTICE GROUP OF THE YEAR BY LAW360

Ogletree Deakins' Employment Law Practice Group was recently named a 2017 Practice Group of the Year by Law360. The Practice Group of the Year awards honor the law firms behind the litigation wins that resonated throughout the legal industry in the past year. This is the fourth time that the firm's Employment Law Practice Group has earned this distinction.



D.C. DOWNLOAD

AN INSIDE LOOK AT KEY ISSUES FROM CAPITOL HILL

by James J. Plunkett (Washington, D.C.) and Harold P. Coxson (Washington, D.C.)

Jim Plunkett and Hal Coxson are Co-Chairs of Ogletree Deakins' Governmental Affairs Practice Group and Principals in Ogletree Governmental Affairs, Inc. (OGA), a subsidiary of Ogletree Deakins that assists clients in addressing regulatory and legislative changes emanating from Washington, D.C.



NLRB General Counsel Memo

On December 1, 2017, National Labor Relations Board (NLRB) General Counsel Peter B. Robb [issued](#) his “mandatory submissions” memo. The memo sets forth the categories of cases that should be sent from the NLRB regions to the Board’s Division of Advice in Washington, D.C., to await further instructions. This includes cases concerning protected concerted activity, off-duty access, and successorship (among other issues).

Tip Pooling Regulation

On December 5, 2017, the Department of Labor’s (DOL) Wage and Hour Division (WHD) [proposed to revise](#) a 2011 regulation prohibiting service industry employers that don’t take a tip credit from participating in tip pooling arrangements in which servers share tips with back-of-the-house staff. Stakeholders have until February 5 to file comments.

NLRB “Ambush” Elections

On December 14, 2017, the NLRB published a request for information (RFI) to solicit public input regarding the 2015 changes to its union election procedures. The purpose of the RFI is “to evaluate whether the Rule should be (1) retained without change, (2) retained with modifications, or (3) rescinded, possibly while making changes to the prior Election Regulations that were in place before the Rule’s adoption.” This means that almost anything is on the table, including targeted changes to specific aspects of the rule. Comments are due by February 12.

Ring Gets NLRB Nod

After weeks of speculation, on January 12, 2018, President Trump officially nominated Washington, D.C. management attorney John F. Ring to fill the NLRB seat that was vacated with the expiration of Philip Miscimarra’s term on December 16, 2017. Although Ring is expected to be confirmed, the timetable for a confirmation vote is unknown at this point. Ring’s confirmation would bring the Board to a 3-to-2 Republican majority. The next Board member term to expire belongs to Mark Gaston Pearce, whose term ends in August of this year.

DOL Reinstates Opinion Letters

On January 5, 2018, the WHD [reinstated](#) 17 opinion letters that it had issued in the waning hours of the Bush administration, but that the Obama administration had subsequently withdrawn. The letters address a wide variety of subject matters, including the exempt status of particular jobs, such as construction supervisors, helicopter pilots, and plumbing technicians.

DOL Establishes New Intern Standard

Also on January 5, 2018, the WHD announced that it would scrap its much-maligned six-part test for determining whether unpaid interns should be classified as employees under the Fair Labor Standards Act. In its place, the WHD will now use the “primary beneficiary” test that is favored by the appellate courts. For more on the DOL’s guidance, see article on page 5 of this issue.

DOL Nominees Confirmed

On December 21, 2017, the U.S. Senate confirmed Kate O’Scannlain as Solicitor of Labor of the DOL and Preston Rutledge as Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). Further, the administration has named Ondray T. Harris as Director of the Office of Federal Contract Compliance Programs (OFCCP). O’Scannlain will be the top lawyer at the DOL, while Rutledge will oversee the development of the rule allowing for association health plans, as well as a revised fiduciary rule.

Association Health Plans Proposal

In October 2017, President Trump issued an executive order that [expanded the availability](#) of alternatives to Affordable Care Act-covered health plans, including association health plans (AHPs). Pursuant to this executive order, on January 5, 2018, the EBSA published a proposed rule to implement the executive order and allow for AHPs. Proponents of AHPs maintain that they allow for expanded coverage while also reducing healthcare costs. Comments are due by March 6.

Union Dues at the Supreme Court

On February 26, 2018, the Supreme Court of the United States [will hear oral argument](#) in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*—the case that challenges the constitutionality of public sector agency fee arrangements. Although the case doesn’t have a direct impact on the private sector, its potentially enormous impact on big labor’s coffers bears watching.

STATE AND INTERNATIONAL ROUNDUP

California



California employers have recently seen an increase in the number of citations issued by the California Division of Occupational Safety and Health (Cal/OSHA) for violations of a General Industry Safety Order requiring that employers' first aid materials be approved by a consulting physician. While many employers have OSHA-compliant first aid kits available for employees, it is likely that the kits comply only with federal OSHA requirements and not the more stringent Cal/OSHA requirements.

Florida



On December 13, 2017, a Florida district court of appeal held that Miami Beach violated Florida law by enacting a local ordinance increasing the minimum wage. According to the court, Florida law prohibits municipalities from setting a minimum wage higher than the state minimum wage. The decision further suggests that any similar ordinances proposed in the state could suffer the same fate, consistent with a growing number of jurisdictions that have overturned local minimum wage ordinances.

Indiana



In *E.T. Products, LLC v. D.E. Miller Holdings, Inc.*, the Seventh Circuit Court of Appeals recently held that noncompete agreements signed by sellers of a business were enforceable under Indiana law, but the sellers did not violate the agreements. In doing so, the court provided valuable considerations for drafting valid noncompete agreements in the context of a sale of business. *E.T. Products, LLC v. D.E. Miller Holdings, Inc.*, No. 16-1204 (September 20, 2017).

Maryland



On January 12, 2018, the Maryland General Assembly overrode Republican Governor Larry Hogan's veto of legislation requiring Maryland employers to provide sick and safe leave to their employees. By overriding the governor's veto, the general assembly made Maryland the ninth state to adopt a mandatory sick leave statute. The Maryland Healthy Working Families Act, which takes effect on February 11, 2018, provides employees with up to 40 hours of sick and safe leave annually.

Missouri



The Missouri Court of Appeals recently issued a decision in favor of a gay employee who filed a lawsuit alleging sex discrimination. In *Lampley v. Missouri Commission on Human Rights*, the employee alleged his employer discriminated against him based on sex because "his behavior and appearance contradicted the stereotypes of maleness held by his employer." The appellate court disagreed with the Missouri Commission on Human Rights' decision to dismiss the case, finding that the employee's claims of discrimination were not based on sexual orientation, but sex itself. *Lampley v. Missouri Commission on Human Rights*, No. WD80288 (October 24, 2017).

Nevada



Effective January 1, 2018, Nevada employers are required to provide workplace protections for employees who are victims of domestic violence. SB 361, which was signed into law by Governor Brian Sandoval last summer, requires employers to provide leave to an employee "who has been employed by an employer for at least 90 days and who is a victim of an act which constitutes domestic violence." Specifically, an eligible employee is entitled to 160 hours of leave (which may be taken in a block or intermittently) during a 12-month period following the date on which the domestic violence occurs. The leave allowed may be paid or unpaid.

New Jersey



On December 20, 2017, Governor Chris Christie signed into law SB 3306, which expands the state's ban-the-box law by explicitly prohibiting employers from inquiring into an applicant's expunged criminal history. Effective immediately, the law requires employers to refrain from: (a) requiring New Jersey applicants to complete any employment application that includes inquiries into that individual's expunged criminal history; or (b) making any written or oral inquiries into a New Jersey applicant's expunged criminal record during the initial employment application process.

New York



On January 1, 2018, the New York State Paid Family Leave Law (PFL) went into effect requiring virtually all private employers in New York to provide paid family leave benefits to eligible employees. Under the PFL, covered employers are required to provide information to employees about their PFL rights. The New York State Workers' Compensation Board (WCB) recently released a manual that identifies the topics that must be included in employee materials and provides model language. The WCB also issued a *Statement of Rights*, which must be provided to employees whenever they take paid qualifying family leave.

Washington



The City of Spokane, Washington, recently enacted Ordinance No. C-35564, making Spokane the second municipality (joining Seattle) in Washington state to "ban the box." This new law limits when employers can inquire into and consider the criminal history of a job applicant. The portions of Spokane's ban-the-box ordinance applicable to private employers will go into effect on June 14, 2018, although the City has indicated that it will not impose any citations or fines for violations of the ordinance until after January 1, 2019.

Wisconsin



The Wisconsin Labor and Industry Review Commission recently issued a highly controversial decision, *Xu v. Epic Systems, Inc.*, holding that (1) an employee cannot waive the right to file a discrimination complaint against her or his employer under the Wisconsin Fair Employment Act (WFEA), and (2) an employee may prosecute WFEA claims on the merits against her or his former employer—and potentially receive a judgment against the former employer before the Wisconsin Equal Rights Division—even if he or she waived and released any and all such claims against his or her employer in a valid severance agreement. *Xu v. Epic Systems, Inc.*, No. CR201301600 (October 24, 2017).

MAY DAY! ARE YOU READY FOR THE GDPR?

A Q&A WITH GRANT PETERSEN (THE FIRST IN A TWO-PART SERIES)

by Lisa E. Kaplan (Atlanta)

The European Union (EU) General Data Protection Regulation (GDPR), which takes effect on May 25, 2018, imposes strict and broad requirements for processing HR data, and creates new rights for data subjects, including applicants, current employees, and departing employees. We interviewed [Grant Petersen](#), a shareholder in Ogletree Deakins' Tampa office and co-founder of the firm's Data Privacy Practice Group, about the impact of the GDPR and about practical steps employers can take to comply. In the next installment, Grant will address the role of employee consent and offer key takeaways for employers that are subject to the GDPR.

Lisa Kaplan: What is the purpose of the GDPR, and to which companies does it apply?

Grant Petersen: The purpose of the GDPR is to implement a uniform and comprehensive data protection scheme across all EU countries to protect the personal information of clients, customers, and employees residing in the EU. However, the GDPR permits several exceptions to this uniform purpose, including permitting each EU country to enact additional or stricter requirements for HR data.

The GDPR applies to entities located within the EU that process personal information regarding EU residents (such as EU subsidiaries of U.S. companies). Additionally, the GDPR applies to entities outside of the EU that process personal information of EU residents in connection with the offering of goods or services to EU residents or in connection with the monitoring of the behavior of EU residents, including the monitoring of work performance. Thus, a U.S.-based parent company that monitors the work performance of EU employees is covered.

LK: With regard to compliance, what are the highest risk areas for employers?

GP: The highest risk area for employers is the monitoring of employee use of computers, mobile devices, and the internet. Unlike U.S. law, which permits employers to engage in extensive monitoring of employee use of company-owned technology to protect confidential information and the integrity of the system, the GDPR places strict limitations on an employer's right to engage in such monitoring. For example, employers must demonstrate and document that their interest in monitoring employees outweighs the employees' privacy rights. Further, with limited exceptions, employers are prohibited from monitoring or reviewing the content of personal emails or communications sent or received by employees using company-owned equipment. Finally, employers must implement safeguards within their computer systems to ensure that they do not monitor an employee's personal communications or internet usage.

LK: What processes should employers have in place to prevent a data breach, and what does the GDPR require in the event of a breach?

GP: Similar to data breach prevention programs in the U.S., employers should implement processes that require strong passwords, limit access to information to only those employees who have a need to know, encrypt sensitive data, monitor unusual activity, establish investigation and reporting protocols for suspected breaches, and require role-based training for employees who handle personal information from the EU. However, unlike U.S. data breach notification laws that require employers to notify local authorities and affected individuals of the breach as soon as reasonably possible (typically 10 to 45 days depending on applicable state law), the GDPR requires employers to notify the appropriate EU data protection authority (DPA) of a breach within 72 hours. Thus, employers should establish their investigation and reporting protocols well in advance of a data breach so that they can rapidly investigate and report a breach to the appropriate DPA within 72 hours.

LK: Do you have recommendations for how employers can train their employees who deal with data so as to reduce the likelihood of noncompliance?

GP: Employers should implement role-based training. For example, while all employees who deal with personal information should receive general training regarding the requirements of the GDPR, individuals who will respond to employee data access requests should be trained specifically on how to properly and timely respond to such requests. Similarly, HR professionals who handle special categories of personal information such as racial and ethnic origin, employee health records, and trade union membership, should be trained on the special safeguards that must be taken in handling such data. Finally, IT personnel should be trained on the data security and breach notification requirements under the GDPR.



TO PAY OR NOT TO PAY?

NEW DOL GUIDANCE ON INTERNS HELPS EMPLOYERS ANSWER THAT QUESTION

by James M. Paul (St. Louis)

Over the last few years, several federal courts rejected the Obama administration's mandatory six-prong test for determining whether an individual can properly be classified as an unpaid intern under the federal Fair Labor Standards Act (FLSA). On January 5, 2018, the Trump administration issued [an overhauled Fact Sheet #71](#), which adopts a more flexible "primary beneficiary/economic reality" test. Below are key takeaways for employers that already have an internship program in place, or may be considering one in the future.

Six Required Criteria Versus Seven Considerations To Be Balanced

In April 2010, the U.S. Department of Labor (DOL) issued its [Fact Sheet #71](#) requiring six factors to be met before an unpaid intern could safely be categorized as such and excluded from the pay requirements of the FLSA. The DOL emphasized that internships in the "for-profit" private sector "will most often be viewed as employment" unless the purported employer could prove the existence of *all six* of the following required criteria:

1. "The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship."

Over the past few years, the Second, Sixth, Ninth, and Eleventh Circuit Courts of Appeals rejected this strict test.

The DOL's recent revised [Fact Sheet #71](#) essentially complies with the courts' guidance on this issue. As a result, the following seven factors (and possibly others) should be considered and weighed:

1. "The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.

4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship."

However, every factor need not be present. The DOL makes clear "no single factor is determinative" and the ultimate answer depends on the "unique circumstances of each case." The "economic reality" of the intern-employer relationship now governs. If the intern or student is the "primary beneficiary" of the relationship, then he or she is not entitled to either minimum wage or overtime pay under the FLSA. Conversely, if the employer is receiving the better end of the bargain, it may have to treat the intern or student just as all of its other employees (i.e., minimum wage and overtime pay are required).

Key Takeaways for Employers With Internship Programs

The DOL's new test makes it easier to create unpaid internship programs that are lawful under federal law as long as the answers to the seven questions show that—on balance—the intern or student benefits more from the relationship than the employer does. In order to ace the test, employers should structure their programs such that all seven factors lean toward an internship—rather than an employer-employee relationship. Moreover, a passing grade absolutely requires implementation of clear policies, forms, and agreements for the internship program. The new year is a good time for every employer to make a resolution to review/audit its existing internship program, or to create a new one from scratch using the new guidelines. While there could be flexibility with a few of the factors (especially when the remaining factors so clearly weigh in favor of the existence of a lawful internship), if some of the factors are missing, the DOL or a court could still find that the relationship is truly an employment relationship.

Employers should keep in mind that this development only affects the analysis under federal law. States (and even some cities and local jurisdictions) can impose stricter requirements on businesses—just like many of them do with regard to minimum wage, overtime compensation, and paid sick time and leave requirements. Employers should confirm that their internship programs comply with all applicable state and local requirements.

TOP

10

TOP 10 HR RESOLUTIONS FOR 2018

by Katrina Grider (Houston)

The holiday decorations have been put away, the gifts you can't use returned, and the diet and exercise plan that you started is already old. With a new year comes new resolutions. With that in mind, here are some HR resolutions to consider—and suggestions for helping make them stick in 2018.

1 Review Your Hiring Procedures

Make sure your pre-employment screening processes (including job applications and interview questions) do not violate recent ban-the-box laws regarding inquiries into applicants' criminal history and other laws regarding salary inquiries. Some state and local ban-the-box laws may impact the way companies draft their background check policies and procedures.

2 Create or Update Your Employee Handbook

Many new laws take effect in 2018. If not yet done, create or update your employee handbook. A handbook can help communicate important workplace information to employees and demonstrate compliance with various employment laws. It's a best practice to review your employee handbook at least annually to ensure it is up to date with current laws and company procedures.

3 Create or Update Job Descriptions

Written job descriptions can help identify essential functions, requirements, and qualifications needed for a position. Effective, accurate, and updated job descriptions can help set clear expectations with employees, evaluate performance, make compensation decisions, identify training needs, facilitate requests for reasonable accommodations, and clarify exempt vs. nonexempt classifications.

4 Develop, Implement, and Enforce a Good Anti-Harassment Policy

2017 was the year of sexual harassment. In 2018, employers need to revisit how they handle harassment complaints. Now more than ever, policies, complaint procedures, and employer investigations will be highly scrutinized. If you do not have a policy, get one. If your "policy" is not written down, formalize it and distribute it to all employees. If your policy is sitting on a shelf somewhere and has not been reviewed in the past several years, dust it off, revise it, and add examples of unacceptable conduct and consequences for violations.

5 Address Retaliation Head On

Retaliation claims continue to predominate among charges filed with the federal Equal Employment Opportunity Commission and state agencies. Therefore, it is critical that every employer have a carefully drafted policy prohibiting retaliation against employees who engage in any kind of protected activity.

6 Train Your Managers and Employees

Managers should be trained on effective communication techniques, interviewing, discipline, equal employment opportunity, harassment, and retaliation. In addition, managers should be trained on how to address leave requests and absences under the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), workers' compensation, and state leave laws. Managers must understand the importance of contacting and involving HR when making decisions that could have potential legal implications for the company. Finally, employees should be trained on the company's policies and procedures—including how to report complaints of discrimination, harassment, and retaliation to the company.

7 Review Leave of Absence Policies

Make sure leave policies incorporate recent state and local leave laws. If you have employees in states that have enacted required leave laws in 2017, make sure company policies are tailored to those requirements. In addition, make sure that processes are in place for addressing leave issues that involve the interplay between the FMLA, ADA, Pregnancy Discrimination Act, workers' compensation, and state leave and discrimination statutes.

8 Evaluate Performance Management

Clearly communicate performance goals to all employees, deliver regular feedback, and provide employees with the support and resources they need to meet their goals. If you already have a performance program in place, review and assess whether it effectively rewards top performers, clearly communicates goals to all employees, and evaluates employees' performance.

9 Review Workplace Violence Policies

Workplace violence can take many forms, including physical violence, harassment, intimidation, and disruption of the workplace. It can affect employees, vendors, customers, and visitors. Under the federal Occupational Safety and Health Act, employers are obligated to provide a safe working environment, including an environment safe from harm, and to minimize the risk of workplace violence. Additionally, many states have workplace safety and violence laws in place. Therefore, it is important to review your policies to make sure they address workplace violence and ensure all employees' safety.

10 Don't Get Scratched by Cat's Paw Management Decisions

The cat's paw theory of liability developed by the Supreme Court of the United States in *Staub v. Proctor Hosp.*, 131 S. Ct. 1186 (2011), arises in many employment discrimination cases. Essentially, the cat's paw theory of liability refers to holding an employer liable for the discriminatory "animus of a supervisor who was not charged with making the ultimate employment decision." All HR managers should understand that if they decide to fire, discipline, or otherwise adversely affect the terms and conditions of an individual's employment based upon the facts provided by another manager, if that manager had a discriminatory bias, the employer may be held liable for unlawful discrimination even though the HR manager had no such bias. Therefore, if HR managers take those statements at face value without doing their own investigation and as a result take adverse action against an employee, the employee may have a valid employment discrimination claim against the company. It is critical that HR decision makers conduct independent investigations into the underlying facts and motivation rather than "rubber-stamping" these decisions.

SPOTLIGHT ON OGLETREE DEAKINS' ARBITRATION/ADR PRACTICE GROUP

What About Class Action Waivers?

2012: The National Labor Relations Board ruled in *D.R. Horton* that federal labor law bans class action waivers in employment agreements.

2013: The Fifth Circuit Court of Appeals rejected that decision in an appeal argued by Ogletree Deakins.

2012–2017: The majority of courts found in favor of such agreements, but some did not.

2017: The U.S. Supreme Court heard oral arguments in *Murphy Oil*, a case that will decide the future of class action waivers in employment agreements.

2018: The Supreme Court is poised to issue its decision in *Murphy Oil*.

Ogletree Deakins recently launched the Arbitration/Alternative Dispute Resolution (ADR) Practice Group. The group assists employers throughout the United States and across industries to create, roll out, and enforce employment arbitration agreements and other ADR programs. Ogletree Deakins has taken a lead role in defending the enforceability of class action waivers in arbitration agreements in several widely influential decisions.

The group is led by Chris Murray, a shareholder in the firm's Indianapolis office, and Jennifer Santa Maria, a shareholder in the San Diego office. According to Santa Maria, employment arbitration and other ADR techniques can help employers and employees achieve quicker and more efficient resolutions to employment disputes. Using ADR, especially arbitration, can reduce the burden and expense of litigation while maintaining fairness to all parties. According to Murray, if the U.S. Supreme Court upholds class action waivers as many observers predict, employers will want to investigate whether individual arbitration programs would make sense for them.

52 OFFICES OF OGLETREE DEAKINS

Atlanta | Austin | Berlin | Birmingham | Boston | Charleston | Charlotte | Chicago | Cleveland | Columbia | Dallas | Denver | Detroit (Metro) | Greenville | Houston | Indianapolis
Jackson | Kansas City | Las Vegas | London | Los Angeles | Memphis | Mexico City | Miami | Milwaukee | Minneapolis | Morristown | Nashville | New Orleans | New York City
Oklahoma City | Orange County | Paris | Philadelphia | Phoenix | Pittsburgh | Portland | Raleigh | Richmond | Sacramento | San Antonio | San Diego | San Francisco
Seattle | St. Louis | St. Thomas | Stamford | Tampa | Toronto | Torrance | Tucson | Washington, D.C.

www.ogletree.com

MEET THE AUTHORS



Harold P. Coxson
Shareholder
Washington, D.C.



Ruthie L. Goodboe
Shareholder
Detroit (Metro)



Katrina Grider
Of Counsel
Houston



Brian E. Hayes
Shareholder
Washington, D.C.



James M. Paul
Shareholder
St. Louis



Grant D. Petersen
Shareholder
Tampa



James J. Plunkett
Senior Government
Relations Counsel
Washington, D.C.



Thomas M. Stanek
Shareholder
Phoenix

Ogletree Deakins

© 2018

Editor in Chief
Jansen A. Ellis

Managing Editor
Stephanie A. Henry

Articles Editor
Hera S. Arsen

Reproduction

This is a copyright publication. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without written permission.

Disclaimer

The articles contained in this publication have been abridged from laws, court decisions, and administrative rulings and should not be construed or relied upon as legal advice. If you have questions concerning particular situations and specific legal issues, please contact your Ogletree Deakins attorney. This publication may be considered advertising under applicable laws.

Additional Information

To request further information or to comment on an article, please contact Stephanie Henry at (310) 217-0130. For additional copies or address changes, contact Marilu Oliver at (404) 870-1755.

Sixth Annual

CALIFORNIA
Ogletree Deakins **125**
LAWYERS

NAVIGATING CALIFORNIA EMPLOYMENT LAW

A Strategic Program for Multistate Employers

FEBRUARY 28-MARCH 3, 2018

LOCATION

The Meritage Resort and Spa
875 Bordeaux Way
Napa, CA 94558
855.884.7687

COST

\$895 per person (clients)
\$1,395 per person (non-clients)

REGISTRATION

ONLINE
www.ogletree.com

EMAIL
ODEvents@ogletree.com

[Download full agenda](#)

HRCI, SHRM, and CLE credit is anticipated for this program. To confirm whether CLE is available in your respective state, please email cle@ogletree.com in advance.

California
EMPLOYMENT LAW &
CABERNET



SAVE THE DATE | MAY 8-9, 2018

Ogletree Deakins | EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION SYMPOSIUM

2018 • The Camby Hotel • Phoenix

Featuring members of Ogletree Deakins' Employee Benefits and Executive Compensation Practice Group, in-house counsel, and senior compensation and benefits professionals

This symposium is designed for senior corporate professionals and in-house counsel who are responsible for employee benefits and compensation. Topics include:

- **Arbitration and other tools to help insulate 401(k) plans from fee litigation**
- **How tax reform will affect your benefits programs**
- **Helping plan fiduciaries respond to cybersecurity threats**
- **Tips and tools for tuning up incentive compensation plans**

Detailed agenda and keynote presentations to follow.

LOCATION

The Camby Hotel
2401 East Camelback Road
Phoenix, AZ 85016
(602) 468-0700

COST

\$595 per person

\$395 per person
(for those attending Workplace Strategies)

REGISTRATION

To register, visit www.ogletree.com or contact our events team at ODEvents@ogletree.com.



Save the Date
MAY 9-12, 2018

Arizona Biltmore
PHOENIX, ARIZONA

Ogletree Deakins Invites You To Join Us For Our Annual
**NATIONAL EDUCATIONAL LABOR AND
EMPLOYMENT LAW SEMINAR**



ARIZONA

Ogletree Deakins' annual Workplace Strategies seminar is the premier event of its kind for sophisticated human resources professionals, in-house counsel, and other business professionals.

Register early at www.ogletree.com.



February 2018

February 1	Webinar	One Year In: Employment and Immigration Law Developments Under the Trump Administration
February 1	Spartanburg, SC	Employment Law Briefing
February 1	St. Louis	Employment Law Briefing
February 1	Birmingham	Who Is a Plan Fiduciary? Is it Me?
February 8	Rosemont, IL	Ogletree Deakins Construction Contracting Fundamentals Series, Part II: Scope
February 15	London	German Employment Law—The Challenges and How to Overcome Them
February 22	Merrillville, IN	Employment Law Briefing
February 27	San Antonio	Employment Law Briefing
February 28	Houston	Employment Law Briefing
February 28	Dallas	Employment Law Briefing
February 28-March 3	Napa	Navigating California Employment Law

March 2018

March 1	Austin	Employment Law Briefing
March 9	New York	Managing a Workforce in New York, New Jersey, and Connecticut
March 9	Las Vegas	Managing a Workforce in 2018
March 21	Detroit (Metro)	Employment Law Briefing
March 22	Carmel, IN	Employment Law Briefing
March 29	Washington, DC	International Labor and Employment Conference: Embracing Globalism—Best Practices in Managing Change for Multinational Organizations

April 2018

April 3	Appleton, WI	Employment Law Briefing
April 5	Madison, WI	Employment Law Briefing
April 10	Racine, WI	Employment Law Briefing
April 10	Philadelphia	Employment Law Briefing
April 11	Brookfield, WI	Employment Law Briefing
April 11	Franklin, TN	Employment Law Briefing
April 11	San Diego	Employment Law Briefing
April 12	Los Angeles	Employment Law Briefing
April 12	Orange County	Employment Law Briefing
April 12	Sacramento	Employment Law Briefing
April 13	San Francisco	Employment Law Briefing

May 2018

May 2	Philadelphia	The Philadelphia Derby
May 8-9	Phoenix	Employee Benefits and Executive Compensation Symposium
May 9-12	Phoenix	2018 National Workplace Strategies Seminar

September 2018

September 20	Indianapolis	Managing a Workforce in 2019
September 20-21	Kohler, WI	Managing a Workforce in 2019
September 28	Denver, CO	Managing a Workforce in 2019

October 2018

October 25	Detroit (Metro)	Employment Law Briefing
------------	-----------------	---

November 2018

November 7-10	Palm Springs, CA	Corporate Labor and Employment Counsel Exclusive
---------------	------------------	--