

Holland & Hart Employment Law Update 2010

Tuesday, September 28, 2010

Key Features of the Employment Law Update 2010 include:

- Employment and Wage & Hour Law Enforcement Under the Obama Administration
- Developments in Immigration Enforcement
- SOX, Retaliation and Whistleblowing Claims
- Cutting-Edge Issues: Medical Marijuana, Social Media, and Federal/State Crackdown on Use of Independent Contractors
- Reductions in Force and the Recession's Effect on Employment Litigation
- CLE and HRCI Credits for Attendees*

7:30 a.m. - 4:00 p.m.

Grand Hyatt Denver

Grand Ballroom, 2nd Floor

1750 Welton St., Denver, CO

Changes keep coming! And every employer needs up-to-date information about the latest federal and local employment law issues. Join us for the **definitive seminar** for in-house employment defense counsel, human resource professionals, and other professionals who deal with employee relations.

Attendees will receive updates on new laws, regulations, and court cases that continue to change the employment law landscape. You'll get practical advice on how to handle an employment dispute, before it results in the commencement of legal action, as well as strategies for developing a successful defense if a lawsuit should result.

This year's update will feature a Keynote Lunch with **Donald J. Mares, Executive Director of the Colorado Department of Labor & Employment**, entitled "What's on the Horizon for the Labor Workforce?" The afternoon program includes **two customized tracks** of instruction: **Enforcement & Compliance** and **New Developments**. Each track will provide an in-depth look at cutting-edge employment issues, provided by leading management-side employment practitioners.

We hope you'll join us for a very informative, practical and fun seminar! ►

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*Approved for 8 general CLE and 1.2 Ethics credits. Also approved for 7.75 recertification credit hours through HRCI.

Program Agenda

7:30 a.m. Registration and Breakfast

8:00 a.m. Opening Remarks by Steve Gutierrez, Chair of Holland & Hart's Labor and Employment Practice Group

GENERAL SESSION (in Grand Ballroom, 2nd Floor)

8:05 a.m. **Top Ten Labor and Employment Issues for 2010**

Can't remember what the Employee Free Choice Act or the Paid Vacation Act are or if they even passed into law? Find out by attending this informative session that will address some of the most important legislation and other big employment issues for the coming year. Topics include federal healthcare reform, the Federal Jobs Creation Bill (HIRE), and pending legislation (including FMLA, ADA, ADEA).

Speakers: Jeff Johnson and John Husband

8:45 a.m. **Buyer Beware: The Hidden Risks of Contractors and the Contingent Workforce**

For years, companies have turned to independent contractors, temporary employees, and other non-traditional employment relationships to handle specific tasks and projects. But with state and federal coffers drying up, multiple agencies are taking a dim view of this now widespread practice. Learn how to avoid the risks and liabilities associated with the contingent workforce.

Speakers: Mark Wiletsky and Tobie Hazard

9:30 a.m. Break

9:45 a.m. **More Angry, More Cynical, or Just Numb? The Recession's Effect on Juror Anti-Corporate Bias in Employment Litigation**

Do current economic conditions threaten a fair trial for corporate defendants? Our senior litigation consultant will review recent data on juror attitudes and discuss how they impact decision making in advance of trial. Attendees will learn the results of Persuasion Strategies' 2009 nationwide survey on juror attitudes toward corporations, including the effects of the economic downturn on juror decision making. Actual jury verdict data from employment litigation cases tried over the past 18 months will be shared.

Speaker: Dr. Ken Broda-Bahm, Ph.D., Persuasion Strategies, a service of Holland & Hart LLP

10:30 a.m. **Protecting Against Unfair Competition: New Developments in the Law of Non-competes**

Employees can be a company's greatest asset, but they can also pose the greatest threat when they walk out the door. Whether they go to a competitor or start their own shop, companies must be prepared to address the often significant threat posed by a former employee who knows all the inner workings of your company and wants to use the information to someone else's advantage. Learn how to protect your organization from unfair competition through non-competes, non-solicits, and non-disclosures and how to enforce those agreements.

Speakers: Steve Gutierrez and Bryan Benard

11:15 a.m. Pick Up Boxed Lunches

11:30 a.m. **Lunch Featuring "What's on the Horizon for Labor Workforce?"**

The Colorado Department of Labor and Employment's mission is to "maximize the value of employment, training and workers' compensation services; dispute resolution processes; and public and workplace protections to our customers and stakeholders." Donald J. Mares, the Executive Director of the Colorado Department of Labor & Employment, joins us to provide an update on the new minimum wage law, an overview of recent state wage and hour trends, and a review of the new independent contractor misclassification law administered by the Department. Mr. Mares will also share the latest on state immigration/employment verification laws and directions. Peter H. Wingate Ph. D., Deputy Director of the Colorado Division of Labor, will assist in the presentation.



Keynote Speakers: Donald J. Mares, with special guest Peter H. Wingate, Ph.D.

12:30 p.m. Break to Selected Afternoon Track

Program Agenda: Afternoon Tailored Tracks

	ENFORCEMENT & COMPLIANCE TRACK <i>(in Grand Ballroom, 2nd Floor)</i>		NEW DEVELOPMENTS TRACK <i>(in Mt. Columbia Room, 3rd Floor)</i>
12:45 p.m.	<p>Top Ten Termination Mistakes Think getting rid of that troublesome employee will solve your company’s problems? Think again. Termination missteps are amongst the most fruitful sources of litigation for plaintiffs’ attorneys. This session will illustrate the careful planning and delicate execution required to solve, rather than create, employment problems through termination. <i>Speakers: Brian Mumaugh and Brad Williams</i></p>	12:45 p.m.	<p>SOX, Retaliation, and Whistleblowing Claims What can you do with a problem employee who suddenly claims the books are being cooked, or that illegal discrimination is occurring? Those claims, even if untrue, may be protected. Sarbanes-Oxley, Title VII, and a host of other federal and state laws protect employees and so-called whistleblowers from retaliation. These claims are on the rise and employers face significant exposure when retaliation and whistleblowing claims go to trial. Learn how to address these difficult situations so that you can avoid a retaliation claim before it is filed. <i>Speakers: Christina Gomez and Mark Wiletsky</i></p>
1:30 p.m.	<p>Making Sense of Overtime and Exempt Status Individual and class actions for unpaid overtime continue to plague companies. Long-standing practices are being challenged and highly compensated employees are challenging their status as overtime-exempt. This session will cover everything from the basics to advanced wage and hour issues. <i>Speakers: Jude Biggs and Joe Neguse</i></p>	1:30 p.m.	<p>The Straight Dope on Medical Marijuana in Colorado As of November 2009, there were over 30,000 medical marijuana cardholders in Colorado. Since then, the state has received an average of 400 applications per day. Think you don’t have a medical marijuana cardholder in your workforce? Think again. This session explores the myths surrounding accommodating medical marijuana in the workplace, discusses recent case law on the issue, and addresses drug testing employees who are registered medical marijuana users. <i>Speakers: Tobie Hazard and Emily Hobbs-Wright</i></p>
2:15 p.m.	Break	2:15 p.m.	Break
2:30 p.m.	<p>How to Successfully Handle Government-Led Investigations Numerous factors have led to an increased wave of discrimination charges and administrative agency investigations and as a result, employers are increasingly finding themselves in the cross-hairs. Please join us for a discussion on employer rights and responsibilities in handling government-led investigations, including what to expect, how to navigate successfully through the various scenarios, and how to respond appropriately. <i>Speakers: Anthony Hall and Dora Lane</i></p>	2:30 p.m.	<p>A Bright New Day for the ADA? OR Is Everyone Disabled Under the New ADA? Under the ADAAA, the term “disability” refers to: a physical or mental impairment that substantially limits one or more major life activities of an individual, a record of such an impairment, or an individual regarded as having such an impairment. Does this mean everyone is disabled? It’s been a year since the ADA amendments passed. How are the courts interpreting the new broader definition of disability and other changes to the Act? This session will discuss these changes and give a practical approach to future ADA-based litigation. <i>Speakers: Dean Bennett and Scott Randolph</i></p>
3:15 p.m.	<p>Avoiding the Pitfalls of Internal Investigations Investigations are all about learning the facts you need to make the right decisions. But to the employee who has been fired (and his lawyer), scrutiny of the investigation can present an opportunity to divert attention from the merits of the decision while arguing that it “just wasn’t fair.” We will review the most common pitfalls that trip up an investigation and give your ex-employees something to really complain about. <i>Speakers: Brad Cave and Joanna Vilos</i></p>	3:15 p.m.	<p>Walking the Fine Line of Social Media You need to know what your employees and potential employees are doing on the Internet. A personal blog can subject an employer to liability and a Facebook page can raise red flags. Companies are expected to be aware of it all. This session will discuss new FTC regulations and other legal developments resulting from the explosive growth of social media and the internet. <i>Speakers: Michael Carrigan and Ian O’Neill</i></p>
4:00 p.m.	Adjourn	4:00 p.m.	Adjourn

Keynote Speaker

DONALD J. MARES



Donald J. Mares is the Executive Director of the Colorado Department of Labor & Employment. In December 2006, Governor Bill Ritter appointed Mr. Mares to serve as executive director of the 1,100-person agency, which fosters economic growth by supporting businesses and workers.

His public service includes two terms as Denver Auditor, the second-highest elected position in the City and County of Denver, and seven years in the Colorado State Legislature, as State Senator and State Representative.

With nearly 15 years of experience in elected office, Mr. Mares has taken the reins in issues of education, health care, disability rights, employment and workforce development.

During his tenure as Denver Auditor, Mr. Mares made significant technological advancements which included implementation of a citywide accounting and financial reporting system, the creation of the City's first Internet homepage and electronic family support wage garnishment.

Mr. Mares currently serves as president of the board of the Latin American Educational Foundation, the Wells Center Board of Directors and was appointed by Governor Ritter to serve on the United States' Office of Management and Budget's Improper Payments workgroup dealing with Incentives and Accountability.

He earned his bachelor's degree in psychology, with honors, from Stanford University in 1979 and his law degree from the University of Pennsylvania in 1982.

PETER H. WINGATE, Ph.D.

Peter H. Wingate, Ph.D., is the Deputy Director of the Colorado Division of Labor, where he administers and enforces Colorado wage and hour, immigration, youth, and union laws.

Dr. Wingate has extensive experience in providing expert witness services and support in employment law, and is the author of the Division's Advisory Bulletins and Resource Guide. He is recognized for his publications in such outlets as: Human Performance, Law and Human Behavior, Research in Personnel and Human Resources Management, and Employment Discrimination Litigation: Behavioral, Quantitative, and Legal Perspectives.

Dr. Wingate received his doctorate in industrial/organizational psychology from Colorado State University, holds a master's degree in clinical psychology from San Diego State University, and obtained his bachelor's degree in economics and psychology from Colby College.

Speaker Biographies



Steve Gutierrez is the Chair of Holland & Hart's Labor & Employment practice group, where he advises private employers regarding policies and practices relating to employment relationships. He has extensive experience addressing claims concerning wrongful termination, breach of express or implied employment contracts, violation of covenants not to compete, contracts for the protection of trade secrets, employment discrimination, wage matters (including FLSA collective actions), FMLA claims, defamation, torts, and claims of retaliatory discharge.



John Husband currently serves as Chair of Holland & Hart's Management Committee. He counsels a wide variety of clients from Fortune 500 companies to small employers on a range of employment matters, including wrongful discharge, equal employment opportunity, trade secrets and covenants not to compete, wage and hour, privacy, disability, occupational safety, affirmative action and the law involving collective action, strikes, unions, and collective bargaining.



Bryan Benard regularly represents both private and public clients in wrongful termination, harassment, and discrimination claims in both federal and state courts, as well as in administrative proceedings before federal and state agencies. Mr. Benard counsels clients regarding employee relations, employee contracts, and employee handbooks and represents employers in matters related to the FMLA, ADA, and FLSA, including administrative investigations into wage and hour complaints.



Dean Bennett represents public and private companies in both state and federal court to resolve complex contract and business disputes. His practice focuses on representing clients facing claims for retaliation, wrongful discharge, and charges of discrimination. He has experience litigating and trying cases involving employee handbooks, policy manuals, non-compete covenants, and other contract based claims. Mr. Bennett is experienced in drafting various employment related agreements, including separation agreements.



Jude Biggs defends employers in employment-related litigation and advises employers on a variety of employment law topics, such as complying with the Americans with Disabilities Act and Family and Medical Leave Act, drafting and enforcing covenants not to compete and confidentiality agreements, drafting employee handbooks and policies, conducting internal investigations, compliance with wage and hour laws, implementing drug testing programs, developing internal dispute resolution systems, and reducing the risks of litigation.



Dr. Ken Broda-Bahm, Ph.D. has been an active litigation consultant for the past 15 years and is a past President of the American Society of Trial Consultants. With a doctorate in speech communication emphasizing the areas of rhetoric and legal communication, he has provided research and advice on a variety of plaintiff and defense cases relating to employment. He is experienced in assisting with jury selection, preparing witnesses, designing and evaluating mock trial and focus group research as well as in evaluating the results of *venire* surveys and conducting post-trial juror interviews.



Michael Carrigan is a senior member of the firm's Litigation Department and has extensive experience in complex business litigation. He has litigated cases before the Colorado Court of Appeals, the Colorado Supreme Court, the United States District Court for the District of Colorado, and the United States Court of Appeals for the Tenth Circuit. Mr. Carrigan has represented a number of individuals and businesses investigated for or charged with economic crimes and has frequently obtained full dismissal of the charges.



Brad Cave represents employers in matters involving discrimination, harassment, wage and hour disputes, defamation, wrongful discharge, breach of contract, and employment-related torts. He also advises employers on issues related to employee handbooks and personnel policies; compliance with federal and state statutes and regulations; and employee investigations, discipline and termination. He conducts training sessions for employers, managers, and supervisors in areas such as investigations, discipline and termination, harassment, discrimination, disability accommodation, and supervisory responsibilities.



Christina Gomez practices in the areas of labor and employment and appellate litigation. Her labor and employment practice focuses on the representation of employers in litigation of discrimination, harassment, retaliation, wrongful discharge, breach of contract, and other employment-related claims. She also provides advice to employers in dealing with workplace issues, including hiring, firing, discipline, pay practices, privacy rights, family and medical leave, application of non-competition agreements, and compliance with federal and state laws.



Anthony Hall provides litigation defense and extensive preventative counseling to his clients in virtually all areas of labor and employment law. He has significant experience handling virtually all forms of discrimination and harassment cases under Title VII and state anti-discrimination laws, as well as individual and class action wage and hour cases. He regularly handles disputes involving trade secrets, wrongful termination, defamation, workplace violence, and non-competition agreements, and provides advice and litigation defense to local governments and school districts in connection with employment disputes.



Tobie Hazard counsels companies on day-to-day employment issues. This includes advising employers on hiring, discipline, and termination decisions; on leave and disability issues; drug testing and workplace safety matters; preserving trade secrets; and employment issues relating to plant closures and mass layoffs. By helping employers develop legally sound and enforceable personnel policies and auditing their existing human resources practices and procedures, Mr. Hazard has assisted many Colorado companies, large and small, in minimizing the risk of employment-related litigation.



Emily Hobbs-Wright represents employers in cases involving religious, race, sex, national origin, age, and disability discrimination; sexual harassment; retaliation; the FMLA; and various other state law claims. She advises human resources personnel and in-house counsel of local and national companies and government agencies on various employment-related issues including hiring, discipline, termination and retention decisions, employment policies, workplace investigations, pay practices, drug and alcohol testing, and compliance with federal and state civil rights laws.



Jeff Johnson has over 30 years of experience representing management in a number of areas, including employment discrimination, wrongful discharge, wage and hour, National Labor Relations Act matters, personnel counseling, individual employee rights, and non-compete agreements and other trade secret matters. He has labor and employment law experience in a wide variety of industries, with a broad range of clients, from Fortune 500 companies to small businesses. Mr. Johnson also has substantial experience in defending class actions and multi-plaintiff cases on behalf of large employers.

Speaker Biographies (cont.)



Dora Lane practices primarily in the field of employment and labor law. Her experience includes counseling clients on wage and hour, retaliation, and other employment related issues. Prior to joining the firm, she clerked for Justice Mark Gibbons at the Nevada Supreme Court. Ms. Lane speaks frequently at seminars on employment and labor topics and has provided training to professionals on a wide range of employment-related topics.



Brian Mumaugh represents employers in a broad range of employment matters including Title VII, age discrimination, FLSA wrongful discharge and collective actions, breach of contract, public policy discharge, covenants not to compete, EEO, and trade secrets. He has significant experience representing management in labor matters including unfair labor practice proceedings, unit determinations, representation elections, collective bargaining, labor arbitrations, and board proceedings under the NLRA and RLA.



Joe Neguse practices in the areas of labor and employment and commercial litigation. Prior to joining Holland & Hart, Mr. Neguse was a legal extern for Colorado Governor Bill Ritter's Office of Legal Counsel and also worked for the former Speaker of the Colorado House of Representatives, Rep. Andrew Romanoff. In November of 2008, Mr. Neguse was elected by the voters of the 2nd Congressional District to serve as a Regent for the University of Colorado. He was honored with the Colorado Democratic Party "Rising Star Award" for 2010.



Ian O'Neill assists clients in a wide variety of technology, privacy, Internet and advertising or marketing matters, including software licensing, maintenance and support agreements, content licensing, online copyright management, electronic commerce agreements, and intellectual property licensing. Additionally, he is experienced with virtually all matters relating to Web 2.0 strategies, list and panel building, licensing and management, e-mail marketing, content management, web site privacy policy and terms of use agreements, and Internet advertising agreements.



Scott Randolph practices in virtually all areas of commercial litigation, with an emphasis on complex commercial and employment litigation. He has defended claims for workplace retaliation and wrongful discharge. His record includes successful defense of claims arising under the Fair Labor Standards Act, the Family and Medical Leave Act, and Title VII. Mr. Randolph regularly represents employers through all stages of the litigation process, from preparing responses to administrative charges, through final resolution.



Joanna Vilos advises and defends employers in matters involving discrimination, harassment, retaliation, wrongful discharge, breach of contract, employment-related torts, non-compete agreements, trade secrets, wage and hour disputes, First Amendment retaliation, and Equal Protection. She also has experience with complex commercial litigation involving class actions, telecommunications, business torts, and contractual disputes.



Mark Wiletsky has experience in virtually all aspects of employment law, including defense of claims at the administrative, trial, and appellate levels under Title VII, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act, Sections 1981 and 1983, and First Amendment retaliation claims. He has handled traditional labor issues and arbitrations as well. Mr. Wiletsky has counseled employers regarding layoffs and workplace investigations, as well as protecting sensitive data and what to do in the event of a data security breach.



Brad Williams practices in the areas of labor and employment and commercial litigation. Prior to joining Holland & Hart, Mr. Williams served as a law clerk to The Honorable Edward W. Nottingham and The Honorable Christine M. Arguello, United States District Court Judge for the District of Colorado. In these capacities, Mr. Williams helped draft over fifty orders on largely dispositive motions in cases ranging from employment discrimination, to civil rights, to tax law.

IMPORTANT INFORMATION:

This conference is similar to any other legal education seminar designed to provide general information on pertinent legal topics. The statements made and any materials distributed as part of the seminar are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the speakers. This conference is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

Registration and Information

R.S.V.P.
by Friday,
September 24, 2010

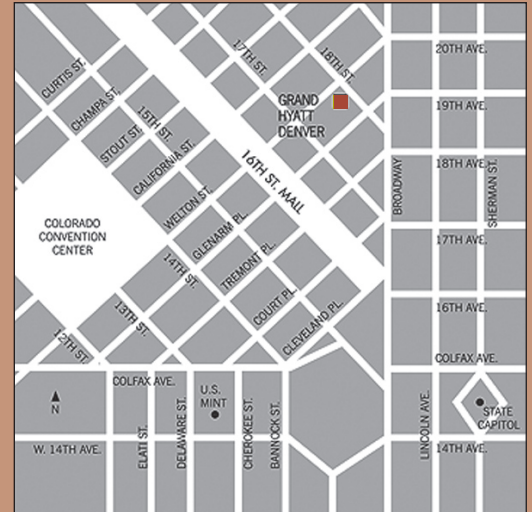
Register online at:
www.hollandhart.com/ELU

Or, complete the form below and mail,
e-mail, or fax to:

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1750 Welton Street
Denver, CO 80202

*Self-parking is available at the
Hyatt Garage which is accessible
on Glenarm between 17th and 18th
Streets.*



Fee: \$79 (includes breakfast and lunch)
\$59 for Mountain States Energy Alliance
members

R.S.V.P. Deadline: All registration forms must
be received by Friday, September 24, 2010.

YES, I would like to attend the Employment Law Update 2010.

First Name: _____ Last Name: _____

Title: _____

Address: _____

City: _____ Zip: _____

Phone: _____ Fax: _____

E-mail Address: _____

Payment Method: **Visa** **MasterCard** **AmEx** **Discover**

Card #: _____ Exp. Date.: _____ Sec. Code: _____

Signature: _____

Please indicate which afternoon tailored track you are interested in attending:

ENFORCEMENT & COMPLIANCE TRACK

Top Ten Termination Mistakes
Making Sense of Overtime and Exempt Status
How to Successfully Handle Government-Led Investigations
Avoiding the Pitfalls of Internal Investigations

NEW DEVELOPMENTS TRACK

SOX, Retaliation, and Whistleblowing Claims
The Straight Dope on Medical Marijuana in Colorado
A Bright New Day for the ADA? OR Is Everyone Disabled
Under the New ADA?
Walking the Fine Line of Social Media