

LITTLER • THE EXECUTIVE EMPLOYER® CONFERENCE



# PAST, PRESENT & FUTURE OF EMPLOYMENT & LABOR LAW: Lessons Learned, Critical New Developments & Future Challenges

May 6–8, 2015 • Phoenix, AZ

**Littler**®



# PAST, PRESENT & FUTURE OF EMPLOYMENT & LABOR LAW: Lessons Learned, Critical New Developments & Future Challenges

In the last five years, changes in employment and labor law have been remarkable in both scale and scope. From the Affordable Care Act, to unprecedented efforts by the NLRB to intrude into the non-union workplace, to the rapid escalation of local efforts to increase the minimum wage and expand benefits available to employees, this decade may prove to be one of historic change for the employer community. The mid-point of this critical decade is a good time to reflect on the lessons we have learned, new developments that have arisen and the challenges that lie ahead. We invite you to join us for the **2015 Executive Employer Conference**, our annual exploration and investigation of the most current legal developments, emerging trends and essential compliance requirements facing every employer. This year, as our theme suggests, we take a look back, review the current legal landscape and look ahead to the future.

## LESSONS LEARNED

In the Littler Report released at the 2010 Executive Employer Conference, Littler identified 10 workplace trends for the new decade, including increased privacy concerns, new types of class action litigation, the growth of the contingent workforce and changes in employment and labor practices. As we go through this transformative decade, we will step back and see if those predicted trends came to pass. More important, for those trends that did emerge, we will assess the actual impact on the workplace and the practices that helped employers. At this year's Executive Employer Conference, we will also learn from seasoned veterans, some of the leading in-house counsel and human resource professionals in the country. We will hear about their best practices for working with outside counsel, serving corporate constituents and dealing with government agencies and regulators.

## CRITICAL NEW DEVELOPMENTS

At the Executive Employer, you will hear from some of Littler's practice groups and leading practitioners as they review the latest developments across a wide range of topics and offer practical solutions to enhance your organization's compliance efforts. They will address some of the most significant threats employers face today – whether wage and hour class actions filed by aggressive plaintiff's lawyers or overzealous federal agencies seeking to leave their mark on regulations before the next election. Or perhaps state legislators looking to fill the legislative vacuum on Capitol Hill. The most prominent professionals in their field will discuss these and other timely issues.

## FUTURE CHALLENGES

A hallmark of the Executive Employer Conference is Littler's consistent focus on foreseeing the challenges that lie ahead and assisting clients in getting a head start and preparing their organizations for what the future holds. This year will be no exception, as we review potential legal and technological changes that may soon become workplace realities.

We hope you will join us in Phoenix!

**The Attorneys of Littler Mendelson**

# WEDNESDAY ■ MAY 6

11:00 am	<b>Pre-Conference Registration</b>		
12:00 pm – 1:00 pm	<b>Lunch</b> Provided for all pre-conference attendees		
<b>PRE-CONFERENCE SESSIONS</b>			
1:00 pm – 5:00 pm	<p>Conducting Lawful Investigations: The Good, the Bad, and the Ugly</p> <p><i>There is an additional charge to participate in this session.</i></p>	<p>Global Employer 2015: Understanding the Times – Innovating Solutions</p>	<p>Women’s Leadership Forum</p>
6:00 pm	<b>Conference Registration</b>		
6:30 pm	<b>Reception and Welcome Dinner</b>		

# THURSDAY ■ MAY 7

7:00 am – 8:00 am	<b>Breakfast</b>					
8:00 am – 9:15 am	← <b>General Session—The 2015 Littler Report</b> →					
<b>TRACKS</b>	<b>LESSONS LEARNED</b>	<b>CRITICAL NEW DEVELOPMENTS: THE REGULATORY AGENDA</b>	<b>CRITICAL NEW DEVELOPMENTS: KEEPING COMPLIANT</b>	<b>FUTURE CHALLENGES: THE CHANGING LEGAL LANDSCAPE</b>	<b>FUTURE CHALLENGES: THE CHANGING WORKPLACE</b>	<b>INNOVATIVE LEGAL SERVICE SOLUTIONS</b>
9:45 am – 11:00 am	Partnering with Outside Counsel – Best Practices	Independent Contractors, Franchisors and Staffing Firms: The Continuing Crackdown on the Contingent Workforce	Avoiding Legal Claims in the Hiring Process	The Big Move Towards Big Data in Employment	The New “New Digital Workplace”: What’s Next and What Should Employers Do to Prepare?	Managing the Changing and Complex Legal Landscape: Littler’s Online Solutions for Keeping Yourself and Your Policies Up to Date
11:15 am – 12:30 pm	Partnering Together: Making the Legal – HR Relationship Work	The NLRB’s New Election Rules – Are You Prepared?	Running the Gauntlet: Surviving Expanding ADA, FMLA, and Paid Sick Leave Obligations	Whistleblowing on the Move: Expanding Rights, New Risks and the Compliance Strategies to Stay One Step Ahead	Working from Home in All Its Dimensions	Littler CaseSmart: Using Data Analytics and Legal Project Management to Limit Risk and Control Spending
12:30 pm – 1:45 pm	← <b>Lunch / The 2015 Employment Law Update</b> →					
2:00 pm – 3:15 pm	Partnering with Your IT Department – Beyond BYOD: Preparing for BYOX Policies, Information Security and Privacy, and Information Management	The OFCCP and Federal Contractors Report	Noncompetes and Trade Secrets: Legal Update and Practical Impact	Working with a Multi-Lingual, Multi-Cultural Workforce	Preparing for Emergencies in an Age of Epidemics, Storms & Workplace Violence	The Online Promise Becomes Reality: Software and Artificial Intelligence as a Legal Service
3:30 pm – 4:45 pm	Partnering with Your IT Department – The Litigation Landscape	The Workplace Safety Report	Payroll Taxes: Seeing Through the Fog	What You Should Know About the EEOC and its Enforcement Protections for LGBT Workers	Health Surveys, Blood Draws and Coaching, Oh My!	Presentation Skills and Training Strategies for the Modern Workforce
5:00 pm – 6:00 pm	<b>WPI Legislative Update / 50 State Survey Update</b>			<b>Critical Developments in Latin America</b>		
6:30 pm	<b>Special Dinner Event – <i>The continuation of a great Littler tradition</i></b>					

# FRIDAY ■ MAY 8

## SPECIAL INDUSTRY BREAKFASTS

7:30 am – 8:30 am	Retail Industry	Healthcare Industry	Government Contractors		
TRACKS	LESSONS LEARNED	CRITICAL NEW DEVELOPMENTS: LITIGATION AVOIDANCE	CRITICAL NEW DEVELOPMENTS: THE CHANGING LEGAL LANDSCAPE	FUTURE CHALLENGES: THE CHANGING LEGAL LANDSCAPE	THE 2015 HR WORKSHOP
8:45 am – 10:15 am	Keeping Compliant – Policy Development and Management Recommended Practices	Fighting Back Against New Anti-Arbitration Tactics by the Government, Hostile Courts and an Energized Plaintiffs' Bar	The Wage & Hour Report	Today's Hot Labor Topics – Social Media and Email, Joint Employers, ACA & Pension Reform	Wait, Wait, Don't Tell HR
10:30 am – 12:00 pm	In-House Investigations – What's Luck Got to Do With It?	Benefits Document Drafting is Key to Staying Out of Court	The Class Action Report – What's Next in Class Actions and What Can Employers Do to Prepare	Blurred Lines in the Workplace: Drawing the Lines Between Work and Your Personal Life	Why Can't I Just Ask? When Asking for Information May Be Worse Than Not Knowing
12:15 pm – 1:15 pm	 <b>Ethics Special Session: Ethical Considerations Applicable to Settlement Negotiations and Mediation</b> 				

1:00 pm – 5:00 pm

### Conducting Lawful Investigations: The Good, the Bad, and the Ugly

Conducting effective internal investigations of workplace misconduct requires not only analytical expertise and knowledge of the law, but also the ability to gather facts in an efficient and fair manner and to articulate findings objectively. Through this hands-on, interactive workshop, you will learn the art of the investigation process and new techniques for conducting a lawful and effective investigation. We will discuss best practices that work and common practices that do not. We will also discuss in detail a list of common pitfalls. Participants will be actively engaged in using their newly acquired investigative techniques and will have the opportunity to practice them during this session.

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

*There is an additional charge to participate in this session.*

1:00 pm – 5:00 pm

### Global Employer 2015: Understanding the Times – Innovating Solutions

Recent legislative initiatives and court rulings in Europe, Latin America and other key regions of the world illustrate that employers face divergent pressures on important, evolving issues. In this forum, experienced attorneys and business leaders will discuss innovative solutions and strategies to help global employers effectively respond to these new challenges. During this highly interactive forum, we will discuss:

- Updates on important employment laws and initiatives in multiple jurisdictions impacting the workplace and specific industries;
- Expanded employee rights and labor reforms: strategies for employers' global compliance and risk management;
- The impact of the United Nations' "Guiding Principles on Business and Human Rights" and other influential forces; and
- Cybersecurity: complying with divergent data privacy regimes.

This session is presented by Littler's International Employment and Labor Law Practice Group and **Littler Global**, and is intended for corporate executives, in-house employment counsel, and human resources professionals of businesses with multinational operations.

1:00 pm – 5:00 pm

### Women's Leadership Forum

In this Forum, we will bring together women executives from around the country to talk openly and candidly about issues and challenges that women face in the Legal, Human Resources and Executive contexts generally and the labor, employment and benefits world. We are planning to discuss topics such as the balancing act lawyers must manage, as well as managing alternative career paths and transitions, navigating the impact of workplace stereotyping, moving into the C Suite, and mentoring and sponsoring those who follow. We anticipate this will be a dynamic gathering of powerful women leaders at various career stages sharing their experiences, their successes, their failures, and life lessons.

This session is presented by Littler's Women's Leadership Initiative (WLI). The WLI focuses on developing and retaining women leaders within Littler, and emphasizes the value and importance of having women leaders at every level of the firm. Lawyers involved with the WLI can discuss their experiences and readiness to take on new roles, learn how to promote their successes and identify and hone skills needed to advance.



9:45 am – 11:00 am

### Partnering with Outside Counsel – Best Practices

In-house counsel face numerous challenges in their day-to-day work. They must keep their business in compliance with constantly changing laws and protect the organization from exposure to litigation risks. Couple those challenges with operating within strict budgets and working constructively with internal constituencies, and managing the relationship with outside counsel takes on an added importance. This session will include insight from in-house counsel on different strategies and best practices that can be used to work most effectively with outside counsel.

11:15 am – 12:30 pm

### Partnering Together: Making the Legal – HR Relationship Work

Have you ever encountered a situation in which HR and legal have evaluated a workplace incident differently or provided potentially conflicting information to an employee? Have you wondered how to juggle being practical and compliant when dealing with a troublesome employee who seems bent on destroying workplace morale? In this session, hear about similar real-life successes and failures from this seasoned panel of in-house counsel and HR executives. Thorny scenarios based on actual events will be illustrated by videotaped vignettes, and panelists will expound upon these examples, sharing practical tips about what they have learned.

2:00 pm – 3:15 pm

### Partnering with Your IT Department – Beyond BYOD: Preparing for BYOX Policies, Information Security and Privacy, and Information Management

The phenomenon widely known as “BYOD” or “Bring Your Own Device” has grown to the point where employees want to use not just their smart phones at work but also their own computers, tablets, cloud services and storage devices. This proliferation of consumer devices, apps, and tools poses unique challenges for companies that must comply with a variety of information security, privacy, and management obligations.

This session will address the critical role in-house counsel and HR leaders play in the debate over this transformation of corporate IT. We will also discuss the importance of partnering with your company’s IT leaders to ensure that employee, customer, and business partner data is handled in accordance with your company’s legal and contractual obligations.

3:30 pm – 4:45 pm

### Partnering with Your IT Department – The Litigation Landscape

With continued advancements in technology and the ongoing digitization of the global workforce, electronic records are now more than ever at the center of litigation. Coupled with the staggering volumes of data that are created every day and the judiciary’s lower tolerance for eDiscovery ignorance or misconduct, it is no surprise that employers continue to struggle with the time-consuming, disruptive, and expensive challenges of meeting eDiscovery obligations.

This session will address the critical role your company’s IT department plays in “the litigation landscape,” including preservation, discovery collections and productions, pushing back in discovery through proportionality and burdensomeness objections, and ways to partner with IT to win cases.

9:45 am – 11:00 am

### Independent Contractors, Franchisors and Staffing Firms: The Continuing Crackdown on the Contingent Workforce

Successfully using contingent workers to augment your workforce or to rely upon outsourced services continues to increase in complexity. Starting in 2016, the Affordable Care Act potentially exposes companies with contingent workers comprising more than 55 percent of their total workforce to draconian penalties. State and federal regulators have continued their scrutiny of alleged contractor/employee misclassification, in part, to help balance their tightening agency budgets. Independent contractor relationships involving transportation, distribution, in-home service, remote telecommuters, and IT continue to be favorite targets for class action claims. Even the NLRB is challenging 30-year old case law on the proper legal standard for co-employment obligations and the Board is separately trying to lump together franchisors and franchisees as employers under the NLRA. In this session, a group of practitioners with extensive experience with contingent workforces will dissect agency enforcement priorities and case law trends, and offer risk mitigation suggestions to avoid or reduce the chances of liability in these complex areas.

11:15 am – 12:30 pm

### The NLRB's New Election Rules – Are You Prepared?

Since the failure of the proposed Employee Free Choice Act, organized labor has sought new opportunities for changes in the law to bolster private sector unionization. Recent success for organized labor has come in the form of new NLRB election rules. This session will analyze the NLRB's new "quickie" election rules – a significant change to existing process and procedure that will make it easier for unions to organize previously unrepresented workforces. Our presenters include Littler lawyers as well as one of the dissenting Members of the current National Labor Relations Board to the NLRB's new election rules. The presenters will discuss the legal implications of the new rules, in addition to the practical effects, including the shortening of the pre-election period, limitations on pre-election unit challenges and the potential for micro or fractured units, as well as new information to be provided to the NLRB by employers when faced with a petition. Panelists will provide legal and practical advice to employers seeking to remain union-free and comply with the new rules.

*(continued)*

2:00 pm – 3:15 pm

### The OFCCP and Federal Contractors Report

In the last year, the President and the OFCCP have imposed several new and expansive requirements on federal government contractors. All federal contractors should be aware of the changing requirements. In this session we will review these changes, including:

1. Minimum wage final regulations applicable to service contractors and construction companies;
2. OFCCP final rule regarding nondiscrimination based on sexual orientation and gender identity;
3. Fair Pay and Safe Workplaces Executive Order, issued in July 2014, requiring the disclosure of labor and employment law violations as part of the procurement process;
4. OFCCP proposed rule regarding non-retaliation in pay issued in September 2014;
5. OFCCP proposed rule on compensation data collection tool;
6. OFCCP new audit scheduling letter and itemized listing, increasing from 11 to 22 the number of paragraphs to which contractors must respond within 30 days of the start of an audit; and
7. OFCCP Sex Discrimination Guidelines, proposed rule issued in January 2015.

Attorneys from Littler's OFCCP and Government Contractors Practice Groups will provide an update on these proposed rules and review the implications of the new final regulations and Executive Orders.

3:30 pm – 4:45 pm

### The Workplace Safety Report

In the not-too-distant future, when employers look back on it, 2015 is going to be known as "The Year of OSHA Inspections." Why? Because of OSHA's newly expanded workplace injury and fatality reporting requirements, the number of workplaces the agency is considering for safety inspections is set to increase by 50 percent. Will your organization be able to say you were prepared and made it through without significant citations and penalties? This year may also be known for new rules as the current administration works to ensure its legacy through implementation of new obligations. Are you prepared for new regulations for exposure to Crystalline Silica and Beryllium? Operator certification for cranes and derricks? Eye and face protection? How about fall protection, confined spaces, recordkeeping and new enforcement initiatives? In this session, members of Littler's Workplace Safety Practice Group will discuss what to expect from state and federal regulation of workplace safety, including new emphasis programs, new safety and health standards, and steps employers can take now to prepare.

9:45 am – 11:00 am

**Avoiding Legal Claims in the Hiring Process**

In the past, employers typically were most concerned with the consequences that followed an employee termination – wrongful discharge, discrimination, or tort claims. Today, more focus than ever is being placed on risks arising during the hiring process. Among the EEOC’s current six priorities based on its Strategic Enforcement Plan (SEP), the first item on the list is “Eliminating Barriers in Recruitment and Hiring.” The EEOC intends to target “class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women, and people with disabilities.” The EEOC has launched nationwide systemic investigations focusing on such claims, and some of the EEOC’s largest pending lawsuits involve failure-to-hire claims. Two of the larger EEOC pattern or practice cases involve criminal background checks; other lawsuits attack a broad range of hiring practices. Even beyond the EEOC, today, employers face a multitude of potential risks on the hiring front, including state law and local “ban the box” legislation, and other restrictions on pre-employment inquiries based on criminal history. They also must deal with the Fair Credit Reporting Act and related state law compliance, and laws expressly barring the use of credit checks except in limited circumstances. This session is designed to provide an update on these evolving risks in the hiring process and provide practical guidance to assist employers in their compliance efforts.

11:15 am – 12:30 pm

**Running the Gauntlet: Surviving Expanding ADA, FMLA, and Paid Sick Leave Obligations**

Imagine . . . a universe where all of your employees show up for work every day (and on time). They need no special accommodations; they work their expected schedules and don’t leave early; they don’t ask to work from home or to have their duties reassigned. It sounds wonderful, but in reality employees need time off from work both for rest and relaxation, and for personal and medical reasons. Recognizing this, the federal government passed the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), and employer obligations under these laws have expanded over time. As state and local governments have increasingly created even more protected time off from work – via paid sick leave, pregnancy leave/accommodation, and family care laws, developing compliant, across-the-board policies has become daunting, to say the least, and sometimes seems downright impossible. This session will provide an up-to-the-minute update on evolving trends in protected time off from work and an overview of practical steps for making the right decisions on policy development and leave administration in the face of ever-growing employee protections.

2:00 pm – 3:15 pm

**Noncompetes and Trade Secrets: Legal Update and Practical Impact**

This session will provide an update on new developments and trends in the area of trade secret law and noncompetition agreements. The panel will address the year in review, including recent authority from the U.S. Supreme Court on forum selection clauses, enforcement initiatives by the NLRB and SEC regarding confidentiality and non-disparagement provisions, and cases from across the country on consideration issues (including the *Fifield* decision out of Illinois). In addition to addressing new federal and state cases and statutes, the panel will engage in a discussion of the impact of these changes on litigation, contract drafting, and unfair competition prevention and planning. These developments will also guide a discussion of best practices in recruiting and hiring strategies when there are noncompete agreements governing the employment relationship.

*(continued)*



3:30 pm – 4:45 pm

### **Payroll Taxes: Seeing Through the Fog**

Payroll taxes represent a major expense for employers both large and small. Join us as we move through the fog and mystery that envelops these taxes and explore the hottest employment taxes topics facing employers. What is “taxable income”? Can employees donate vacation time to a sick colleague? How can employers deal with multi-state taxation in the era of mobile employees? Can employers control unemployment insurance rates? If so, how? The panel will also present tips for surviving the Integrity Act, the federal law that requires states to create laws imposing additional obligations on employers to respond to unemployment insurance claims. This session will focus on answering these questions and providing you with compliance tips necessary to successfully navigate the cloudy world of employment taxation.

---

9:45 am – 11:00 am

### The Big Move Towards Big Data in Employment

Big data has emerged as a powerful new tool used in business, employment and beyond. For corporations, it is used not just to aggregate and analyze consumer trends, but also in the hiring process and as a method to understand and optimize company performance and information across internal departments and units. Big data is not limited to the data sets employers maintain in the normal course of business, such as time, performance and attendance data, but also includes *external* analytics that supplement the traditional methods employers use to evaluate applicants and employees. Big data can examine behaviors and preferences not always associated with job duties to determine potential efficiency and productiveness in the workplace.

What are the FCRA risks when an employer—or its big data analytic vendor—gathers information about applicants and makes hiring decisions based on that data? How will the EEOC’s traditional adverse impact analysis deal with a world in which hiring, promotion, and termination decisions are made through big data analytics? What are the privacy implications of employers receiving information from big data companies examining the online behavior of applicants and employees? Can using big data provide employers with a correlation sufficient to be a legitimate, nondiscriminatory reason for an employment action? This session will explore these and other issues to help employers prepare for the future now.

11:15 am – 12:30 pm

### Whistleblowing on the Move: Expanding Rights, New Risks and the Compliance Strategies to Stay One Step Ahead

The world of whistleblowing continues to see radical expansion and significant change on many fronts – from state and federal courts, legislatures and agencies, to the employee, frontline manager and compliance professional on the ground. This session will cover recent developments and hot topics in this dynamic area, including: whether an individual can claim protected “whistleblower” status after complaining internally or must he or she report to a government enforcement agency; how to deal with in-house counsel or compliance officers as whistleblowers; and whether unethical, improper or even illegal conduct by a would-be whistleblower (such as theft of confidential company information) can count as protected activity for purposes of a whistleblower claim. We will identify the key issues that are sharply dividing courts, including what constitutes “protected activity” and what types of employer conduct can negate an inference of causation. Our experienced panel will also chart the expansion of Sarbanes-Oxley in the wake of *Lawson v. FMR*, identify *Nassar*’s hidden lessons for employers, and offer perspective on what lies ahead in the courts and federal agencies. We will also examine the recent scrutiny of confidentiality and settlement agreement language by the SEC and OSHA, identifying risk areas and practical strategies. Compliance specialists on the panel will then build the bridge from risk to readiness, providing the compliance steps and strategies your organization can implement now to minimize liability in this rapidly escalating risk environment.

*(continued)*

2:00 pm – 3:15 pm

### Working with a Multi-Lingual, Multi-Cultural Workforce

For U.S. employers, having a multi-cultural workforce can be a valuable resource to compete in a global economy. But it can create challenging communication and accommodation issues as persons from various cultures collaborate in the same workplace and with their international colleagues. This session will explore current legal trends and practical approaches on the subjects of religious accommodation, multi-cultural nuances, and language preferences.

For example what do you do when:

- A Sikh tells his NYC-based employer that he needs to bring his Kirpan (ceremonial dagger) to work even though the employer bans “weapons” from the workplace. Does it matter if he works at corporate headquarters? Or in Kansas? Or in Quebec?
- An English-speaking Caucasian employee in the U.S. claims his manager is discriminating against him by communicating with other workers in Spanish thus keeping him out of the loop.
- A U.S.-based employee complains about harassment from a manager based in a country that does not legally prohibit the type of behavior about which the employee complains.
- A female employee complains about being passed over for an assignment at a Saudi subsidiary or about receiving the assignment and being told that she has to be veiled while working in Saudi Arabia.

Our panel will provide attendees with practical, proactive steps geared toward minimizing risks and maximizing the benefits of a culturally diverse and, increasingly, global workforce.

3:30 pm – 4:45 pm

### What You Should Know About the EEOC and its Enforcement Protections for LGBT Workers

The EEOC recently held that discrimination against an individual because that person is transgender – also known as gender identity discrimination – is discrimination because of sex and therefore is prohibited under Title VII. The Commission also has found that discrimination against lesbian, gay, and bisexual individuals based on sex stereotypes, such as the belief that men should only date women or that women should only marry men, also constitutes discrimination on the basis of sex under Title VII. The EEOC has made coverage of lesbian, gay, bisexual and transgender individuals under Title VII’s sex discrimination provisions an enforcement priority. The EEOC has instructed its field offices to investigate charges from individuals who believe they have been discriminated against because of transgender status or those alleging sexual orientation-related discrimination. The EEOC also recently filed two lawsuits involving sex discrimination against transgender individuals – the first of their kind.

This panel will cover the current status of the law regarding LGBT workers and what behavior in the workplace may give rise to a claim of sex discrimination or harassment based on sexual orientation or gender identity/transgender status. This panel also will discuss what policies and procedures should be reviewed and potentially revised by employers to ensure compliance with the EEOC’s enforcement priority, recommendations for training of employees, and workplace guidelines on how managers should address the needs and issues that arise in the workplace when a transgender employee transitions on the job.

9:45 am – 11:00 am

**The New “New Digital Workplace”: What’s Next and What Should Employers Do to Prepare?**

In 2010, employers thought they were experiencing the “New Digital Workplace,” but they had not even conceived of a wide range of digital challenges that are now critical for HR professionals and in-house employment counsel to resolve. These issues include managing the risks arising from increasing reliance on cloud services; addressing the challenges raised by non-U.S. data protection laws; figuring out what to do about wearable technology in the workplace; and responding to security breaches involving HR data. This session will identify the cutting edge issues raised by these new entrants to the “New Digital Workplace” and forecast the next wave of workplace privacy issues that will be commonplace by 2020. The session will provide practical recommendations for managing the latest round of digital risks vexing HR professionals and in-house employment counsel.

11:15 am – 12:30 pm

**Working from Home in All Its Dimensions**

The convenience of having employees telecommute from home brings with it an increasing number of legal issues, the full breadth of which will be covered in this session. Telecommuting issues begin with which law applies to a telecommuter, to whether that law can be varied by agreement, to establishing a safe home work environment. Intellectual property, use and return of company property, data security and retention, and privacy follow close behind. Allowing some employees to work from home may appear to be voluntary, but may have to be offered as an accommodation to others’ disabilities. Telecommuting poses novel issues as to whether travel to local or more distant offices is compensable work time and whether reimbursing the cost of the commute is an expense or a wage payment. And now, after the California Court of Appeal’s decision in *Schwan Home Services*, difficult questions are raised as to when an employee’s cell phone bill – and possibly mortgage – have to be reimbursed by the employer.

2:00 pm – 3:15 pm

**Preparing for Emergencies in an Age of Epidemics, Storms & Workplace Violence**

Workplace safety issues often develop when employers are faced with external challenges. From last year’s Ebola scare to this year’s measles outbreak to extreme weather events, including snow storms and torrential rains, there are many situations employers need to be prepared to handle to ensure the safety of their employees. Workplace violence is also an increasing reality, and it is imperative that employers have safeguards and plans in place to respond to and prevent such situations. This panel, comprising of members of Littler’s Workplace Safety Practice Group, will discuss what has been learned from such recent events. Our panel will look to the future and discuss how disruptive forces such as introducing robots into the workplace will present new workplace safety challenges for employers in the workplaces of the near future.

3:30 pm – 4:45 pm

**Health Surveys, Blood Draws and Coaching, Oh My!**

Navigating the legal landmines of wellness programs can sometimes feel a bit like a trip through Oz. Is there really happiness at the end of the rainbow? Because the laws surrounding wellness programs are ever-evolving, employers need to be regularly reviewing their programs both on paper and in practice to ensure compliance with a myriad of different rules and regulations. Is your program safe from challenges under the ACA, HIPAA, ERISA, GINA and the ADA? How close can you push the wellness envelope to the edge without triggering liability? The Littler panelists in this session will help you get ready for your wellness program checkup and provide you with the latest trends and information on successful corporate wellness programs.



9:45 am – 11:00 am

**Managing the Changing and Complex Legal Landscape:  
Littler's Online Solutions for Keeping Yourself and Your Policies Up to Date**

Over the past decade, employment law change has not come from a gridlocked Congress; instead, the action has shifted to the state and local level where activist legislators and revenue-starved regulatory agencies have moved aggressively to impose new employment law obligations and requirements. Minimum wage increases, living wage ordinances, paid leave provisions and ban-the-box laws have created a compliance nightmare for multi-state employers. Paying attention to news accounts and law firm client alerts can help (especially Littler's ASAPs and blog posts!). But, employers seeking to remain legally compliant need real-time, online solutions informing them of critical legal developments, actionable changes they can implement and, critically, revised HR policies that can be deployed quickly. They also need to have ready, online access to a database of current legal requirements in every jurisdiction in which they operate.

Recognizing this need, Littler has developed a suite of products specifically designed to help employers quickly navigate the maze of multi-state legal requirements, stay abreast of changing legal developments and effectively manage and update their HR policies and procedures. In this session, we will demonstrate some of Littler's newest online tools including LittlerGPS – our online legislative and regulatory tracking tool and multi-state survey database – designed to help you stay abreast of critical changes and HR PolicySmart – our HR policy monitoring service – that will help you integrate the latest legal changes into your employment policies. We will also preview some of Littler's upcoming online products and services designed to make your work – and your life – easier.

11:15 am – 12:30 pm

**Littler CaseSmart: Using Data Analytics and Legal Project Management to Limit Risk and Control Spending**

This session will provide attendees with an in-depth look at Littler CaseSmart®, our innovative and cost-saving solution to managing EEO charges and litigation that combines a streamlined case management approach, state-of-the-art technology platform, and team-based staffing model. Attendees will learn how this solution offers clients immediate cost benefits, while increasing quality and consistency, and, at the same time, providing high-level, strategic counsel. In addition, our panel of speakers will discuss the benefits of the solution's attorney-client privileged data analytics that provide a comprehensive view of the client's charges and litigation portfolio, which enables them to spot patterns of potential business risks and recognize larger employment trends that can drive change.

*(continued)*

2:00 pm – 3:15 pm

### The Online Promise Becomes Reality: Software and Artificial Intelligence as a Legal Service

You've seen the television ads: LegalZoom™ can help prepare your will and incorporate your new business – all online and for a flat fee – without the need for an actual lawyer. Maybe you've heard about those new websites that offer access to thousands of sample legal documents or the buzz about artificial intelligence systems such as IBM's Watson that can perform legal tasks and might someday even replace law firm associates. But can you trust these types of services to answer your business-critical employment law questions, generate valid employment documents, and otherwise provide legal services for your organization? Who is standing behind these services? Who are their subject matter experts?

Join us for this fascinating session as we discuss the impact of technology on the future of legal service delivery and the variety of online solutions currently on the market. We will also look at solutions such as ComplianceHR, Littler's new venture with Neota Logic, a leading-edge legal software company, that is developing a suite of products that enable employers to get concise, instantaneous guidance on critical employment law questions such as whether an individual can be legally classified as an independent contractor, whether an employee can be classified as overtime exempt.

3:30 pm – 4:45 pm

### Presentation Skills and Training Strategies for the Modern Workforce

A common challenge facing employers these days is – how to keep employment law training fresh and engaging while satisfying compliance objectives on a continual basis? The Littler Learning Group has an established record of providing live training that is both content-rich and experientially vigorous. This interactive session will provide participants with the keys to winning presentations through examination and demonstration of successful in-person training techniques that can turn a mundane message into a memorable, sustainable and dare we say it – *fun* experience for attendees.

The legal training corps of Littler Learning Group will discuss and demonstrate state-of-the-art training methods for elevating your organization's presentation game! Our panel of training professionals will provide hands-on guidance on proven strategies for delivering content-rich compliance, diversity and leadership training in highly engaging and effective ways. Through illustrative presentation techniques and role-playing exercises, panelists will demonstrate how to:

- Design an engaging approach to employment law training that blends innovative presentation techniques with substantive content
- Integrate video content in an efficient and interactive manner
- Turn cases into stories: tap into storytelling and performance techniques that enrich content delivery
- Navigate common training “landmines,” overcome presentation concerns and deal with the 5 most “challenging” training obstacles encountered by training professionals
- Encourage presenters to develop a personal, authentic presentation style

Whether your employment-law training goal is to provide more effective training sessions for your organization, improve internal presentation and delivery capabilities, or simply become a more powerful representative when presenting information to stakeholders and clients – this session will have a solution that will help take your training strategy from good to great!



12:30 pm – 1:45 pm

### Lunch / The 2015 Employment Law Update

A perennial favorite at the Executive Employer conference, this special lunchtime session provides a unique opportunity to understand the latest court cases, legislative and regulatory activity and crucial developments that will affect your workplace and your responsibilities this year and for the rest of this decade. As in the past, we have assembled a terrific panel of Littler attorneys from across the country and from multiple practice areas that will guide you through the maze of new developments in a fast-paced and fun-filled session that will prepare you for the challenges ahead.

5:00 pm – 6:00 pm

### WPI Legislative Update / 50 State Survey Update

Littler's Workplace Policy Institute was created to serve as an effective resource for the employer community to engage in legislative and regulatory developments that impact workplaces and business strategies. This special session led by Washington, D.C. insiders will discuss what can be expected during the last two years of the Obama presidency. Following the midterm elections, and with the executive and legislative branches split between the parties, will the gridlock continue? Can the Republican-led Congress thwart the administration's regulatory efforts through budgetary maneuvers? Will the president make an end-run by issuing additional executive orders? Will state legislative activity be a reflection of or reaction to what's happening at the federal level? Come learn about the latest federal agency actions at the emboldened Equal Employment Opportunity Commission, National Labor Relations Board, and Department of Labor, as well as key state-level developments. Our panel will review the latest wage and hour, healthcare, and labor relations proposals, and explore those on the horizon.

5:00 pm – 6:00 pm

### Critical Developments in Latin America

The business climate in Latin America is experiencing important transformations driven by economic and socio-political forces. While falling prices for oil and raw materials are causing a detrimental ripple effect in several key jurisdictions in Latin America, technological advancements are creating new opportunities in various emergent markets. This program will chronicle key employment law developments in the region and provide practical tools for multinational companies to thrive despite the uncertain times. We will discuss topics including:

- Innovative strategies in light of recently enacted employment laws
- Important considerations when conducting individual and collective dismissals
- The use of alternative dispute resolution (ADR) and international arbitration clauses to enforce employment and independent contractor agreements, restrictive covenants, non-competes, and stock option agreements, in an environment traditionally opposed to ADR methods to resolve employment disputes



7:30 am – 8:30 am

Industries across the country are facing new, unique challenges from many fronts including active legislatures, regulators and the courts. On Friday morning, Littler will be hosting breakfasts where you can interact with industry peers, ask questions of Littler attorneys with particular experience in your industry and share best practices.

These special sessions will focus this year on the following industries:

- Retail
- Healthcare
- Construction
- Government Contractors



8:45 am – 10:15 am

### Keeping Compliant – Policy Development and Management Recommended Practices

For many organizations, it is impossible to draft and update policies fast enough to keep pace with the ever-changing legal and regulatory environment. For businesses operating in multiple states and localities, this task is exponentially more difficult. The challenge becomes even more complicated as organizations globalize. New laws today often mean changes to existing policies and procedures or sometimes even an entire overhaul. And even if the organization could quickly update an employee handbook or a code of ethics, how do you roll out the new content in a way that effectively changes behavior? This session will explore some of the new laws affecting employee handbook policies and strategies that companies are using to stay abreast of the changing legal landscape and keep their companies in compliance.

10:30 am – 12:00 pm

### In-House Investigations – What’s Luck Got to Do With It?

After Sarbanes-Oxley, most public companies put in place an anonymous reporting vehicle to raise concerns about company misconduct: the “hotline.” Recently, private employers have realized that they, too, must implement a whistleblowing line and compliance standards mirroring the best practices of publicly traded companies. But what happens once the whistleblower’s report comes in? Employees, shareholders, internal and external auditors, and government regulators are now laser-focused on the employer’s response and process. This session will address some of the most frequent ways investigations break down and describe the best plans and solutions to help prevent those failures.

8:45 am – 10:15 am

**Fighting Back Against New Anti-Arbitration Tactics by the Government, Hostile Courts and an Energized Plaintiffs' Bar**

As this decade began, private arbitration of employment disputes was viewed by many employers as a distinctly “alternative” but not primary means of dispute resolution. After the U.S. Supreme Court cleared the way for the enforcement of class action waivers and allowed parties to delegate issues of arbitrability to the arbitrator, many employers took notice. A steadily increasing number of cases that would have been in court are now decided by the arbitrator. However, new challenges have arisen in the effective drafting and enforcement of arbitration agreements, including the California Supreme Court’s recent decision in *CLS v. Iskanian* barring enforcement of PAGA waivers, the NLRB’s continued opposition to class action waivers, President Obama’s recent executive order addressing arbitration agreements for government contractors, and opposition by an organized plaintiffs’ bar. How do you get the most out of your arbitration agreements? Is now the time to roll out or revise your agreement? How can your organization maximize the chances of enforcing your agreement quickly and cheaply? How have the opponents of arbitration responded? What should employers do?

10:30 am – 12:00 pm

**Benefits Document Drafting is Key to Staying Out of Court**

The members of Littler’s Employee Benefits Practice Group have the knowledge and experience to prevent employers from dancing on the minefield of explosive and very disruptive benefit claims. For example, employers recently have been successfully sued for tens of millions of dollars for breaches of fiduciary duties related to their stewardship of retirement plan investments and their selection of third-party service providers. In addition, the IRS and DOL have been aggressively auditing employers and imposing large penalties for minor mishaps in plan administration, such as misconstruing a plan term, or for inadequate attention to plan governance issues. In this session, our employee benefits litigators and compliance attorneys will discuss simple drafting changes that employers can implement now in retirement, welfare, severance and executive compensation documents that can help mitigate or prevent future costly claims.

8:45 am – 10:15 am

### The Wage & Hour Report

The wage and hour landscape of 2015 will be dominated by the Department of Labor's revision of the exemptions for white collar employees. Anticipated changes include much higher minimum compensation requirements to be overtime exempt and, possibly, a significant narrowing of the primary duty test. Recent case developments regarding overtime exemptions and work time will also be addressed. In addition, the latest developments from the class action front, including new limitations on the attorney-client privilege in defending claims for liquidated damages and extended statutes of limitation, will be reviewed both as to the practical consequences with pending litigation and as defensive measures for employers.

10:30 am – 12:00 pm

### The Class Action Report – What's Next in Class Actions and What Can Employers Do to Prepare

Despite the pundits' predictions of their demise, class and collective actions continue to proliferate in federal and state courts. Even after the hurdles posed by recent U.S. and California Supreme Court decisions, courts continue to throw out the welcome mat for class actions under California's more lenient wage and hour laws, including meal and rest break cases. The good news is there are some emerging bright spots and an increasing number of tools available to defend against employment class and collective actions, in addition to the continuing areas for concern. This session will provide an update on such strategies and provide employers with additional information regarding minimizing their exposure to class and collective actions.

8:45 am – 10:15 am

**Today's Hot Labor Topics – Social Media and Email, Joint Employers, ACA & Pension Reform**

This session will provide a round-up of hot topics in labor relations. As the reconfigured NLRB looks for ways to put unions and the concept of unionization in front of today's mobile workforce, the program will discuss the Board's significant expansion of the concept of "protected concerted activity" and Section 7 rights for nonunion and unionized employees. We will discuss the targeting of nonunion employers through attacks on handbook policies, especially through scrutiny of policies prohibiting employees from discussing their employment on social media sites, reflected in the Board's *Triple Play* decision, and rules limiting the use of company email – a topic enflamed by the recent *Purple Communications* case, where the Board held employees have a right to use their employers' email systems for Section 7 purposes. Panelists will review the significant implications of the Board's attempts to redefine the statutory definition of the term "employer" and force companies to bear responsibility for labor violations of contractors, franchisees, and entities in their supply chain. We will discuss the far-reaching implications of the NLRB General Counsel's decision to issue complaints against McDonald's USA LLC, alleging it to be a joint employer with several of its franchisees. The panel also will cover the Affordable Care Act's shared responsibility mandate (aka "pay or play"), which went into effect on January 1, 2015. Large employers must offer minimum essential coverage that is affordable to all full-time employees and their dependent children or pay a penalty. Employers with union employees who have coverage through a multiemployer plan must determine whether contributions to the multiemployer plan are enough to prevent being subject to the shared responsibility penalty. This session also will explore the latest developments affecting multiemployer pension plans, including an explanation of the new Multiemployer Plan Reform Act and what it means for contributing employers.

10:30 am – 12:00 pm

**Blurred Lines in the Workplace: Drawing the Lines Between Work and Your Personal Life**

The lines between "work" and "home" are blurring. Employees work in an office, at home, on the train and everywhere in between. What happens when activity outside of "work" affects the "workplace?" With the legalization of medicinal and recreational marijuana use in multiple states, navigating prescription drug use in the workplace becomes a pressing issue. Employers may condone social media in the workplace—through a company Twitter account or Facebook page, employee gaming, fantasy teams or other online groups. But what happens when online activities that usually take place outside of work become part of the workplace? These blurred lines between the personal and the professional present new hazards for employers as they navigate this very different—and complicated—workplace.



8:45 am – 10:15 am

### Wait, Wait, Don't Tell HR

Is the law playing games with you? We'll help you solve the puzzles presented by five key, mid-decade HR risks. This interactive program will use video, improvisation and, yes, a bit of an interactive game show, to analyze these key HR risks that have been developing over the course of the decade. These issues are now to the point where you must deal with them or prevent them. The issues involve: (1) the awkward crossroads between religious accommodation and sexual orientation; (2) ADA problems related to your website and electronic systems; (3) the possibility of using "big data" and social media to match candidates with employers; (4) bullying as it's now being defined by law; and (5) how to handle pregnancy-related issues now that the EEOC says they may fall within the ADA and states are passing new pregnancy protection laws.

10:30 am – 12:00 pm

### Why Can't I Just Ask? When Asking for Information May Be Worse Than Not Knowing

Can you ask a 64-year old employee when he plans to retire or a pregnant employee whether she plans to return from maternity leave? How about whether an applicant uses marijuana or whether an evidently injured leg will be healed enough to perform the driving job for which an individual has applied? Is ignorance bliss? Or are the forewarned really forearmed?

Join us as we explore difficult and important, frequently-asked or "want-to-ask" questions—many of which have no clear answer and would stump even the most seasoned professionals. Through a team-based approach, this session will use a "game show" format and create a highly interactive learning experience. Attendees will leave with a greater understanding of what courts have said and how HR professionals can handle these and other "real life" workplace dilemmas.



12:15 pm – 1:15 pm

### **Ethics Special Session: Ethical Considerations Applicable to Settlement Negotiations and Mediation**

In a new Formal Opinion, the State Bar of California has attempted to draw the distinction between “puffery” (ethically permitted) and “improper statements of false material fact” (ethically forbidden). This question is also being looked at by other state bar associations, thus giving rise to a multitude of questions. What are the basic ethical rules applicable to settlement talks and mediation sessions? What is the difference between “puffery” and a “false statement”? Are there some bright-line guidelines that can help the lawyer avoid crossing the line from puffery to a false statement, or to step into other ethical problems during negotiations? This panel will explore these and related questions, providing general guidance and practical suggestions.

*CLE Ethics credit is pending.*



To register for the conference, please visit  
[www.ExecutiveEmployer.com/register](http://www.ExecutiveEmployer.com/register)  
or call Juanita Treadway at 541.301.6102

## REGISTRATION & HOTEL INFORMATION

### Registration

To register for the conference, please visit [www.ExecutiveEmployer.com/register](http://www.ExecutiveEmployer.com/register) or call Juanita Treadway at 541.301.6102.

### Location and Hotel Accommodations

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

Little is pleased to offer a discounted room rate for conference attendees of \$269 plus tax, per night. To receive this discounted rate, you must register for your room through the conference website or call Juanita Treadway at 541.301.6102. 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, Pennsylvania and Texas. 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](http://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]).

---