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Deakins



COMPASS

INSIGHTS AND DIRECTION FOR EMPLOYERS

## HAPPY NEW YEAR FROM OGLETREE DEAKINS!

Jansen A. Ellis, *Editor-in-Chief*

Did you know that the 2018 midterm elections set a record as the first midterm to exceed voter turnout of 100 million people? In this issue, we will talk about the impact of the 2018 midterms for employers as well as topics such as drug testing and change management.



As we begin a new year, many employers are anticipating what 2019 will bring. The past year brought ongoing attention to sexual harassment in the workplace, and it's likely that the effects of the #MeToo movement will persist as the catalyst for additional legislation. The opioid crisis continues to profoundly impact the workplace, which leaves employers navigating complex issues like suspected drug use and accommodations under the Americans with Disabilities Act. At the same time, the number of states and cities permitting medical and recreational marijuana continues to increase. The article on page 5 of this issue will provide updates on the latest state drug testing laws. Artificial intelligence (AI) is another hot topic that brings many new questions and opportunities for employers. The article on page 6 will examine AI technology used by our firm to promote efficiency.

**We wish you all the best for a healthy and prosperous new year.**

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by James J. Plunkett (Washington, D.C.)

Jim Plunkett, co-chair of Ogletree Deakins' Governmental Affairs Practice Group and a principal in Ogletree Governmental Affairs, Inc. (OGA), assists clients in addressing regulatory and legislative changes emanating from Washington, D.C.

In this special edition of the D.C. Download, we examine how the labor and employment landscape may unfold following the 2018 midterm elections.

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AN INSIDE LOOK  
AT KEY ISSUES  
FROM CAPITOL HILL



### U.S. House of Representatives

Beginning in 2019, Democrats will be in control of the House of Representatives for the first time in almost 10 years. Democratic leadership has already named Rep. Bobby Scott (D-VA) to be chair of what will be called the Education and Labor Committee. In addition to advancing legislation, look for Scott to use his oversight authority to shine a light on (and slow down) activities at the Department of Labor (DOL) and the National Labor Relations Board (NLRB). Also, don't be surprised if Scott uses his subpoena power to query employers on a variety of subjects including sexual harassment, corporate diversity, pay equity, paid leave, and more.

### U.S. Senate

In the Senate, Republicans will remain in the majority and will continue to push for confirmation of executive branch nominees and federal judges. In the first two years of the Trump administration, Republicans have confirmed 85 federal court judges (including Supreme Court Justices Neil Gorsuch and Brett Kavanaugh), which already represents a significant and sweeping change to the federal bench. Senate Majority Leader Mitch McConnell likely views these judicial appointments as a bulwark against a deluge of regulatory activity that might ensue should Democrats retake the White House in 2021.

### Sexual Harassment

The rise of the #MeToo movement has placed a renewed focus on sexual harassment in the workplace. In particular, both pre-dispute arbitration agreements and non-disclosure agreements are viewed by some policymakers as tools that help employers sweep harassment allegations under the rug and silence alleged victims. Bipartisan bills that were introduced in the 115th Congress to ban (or at least limit the scope of) arbitration agreements and non-disclosure agreements will undoubtedly be reintroduced in 2019.

### Paid Leave

The policy debate surrounding paid leave has moved from "yes or no" to "What kind of leave?" and "Who pays for it?" Various proposals have been advanced and this debate is expected to continue in 2019. Many in the business community prefer the Workflex in the 21st Century Act, which carves employers out of the patchwork of state and local

leave requirements when they voluntarily provide a certain amount of paid time off as well as a flexible work arrangement (e.g., telecommuting). On the other hand, worker advocates likely prefer the Family and Medical Insurance Leave (FAMILY) Act, which is essentially paid family and medical leave funded by both employers and employees.

### DOL's Wage and Hour Division

Many employers are waiting for the Wage and Hour Division (WHD) to issue three significant rulemaking proposals that were originally scheduled to be released in 2018. This includes clarification of the definition of "regular rate" for calculating overtime, amendment of the joint employer regulations under the Fair Labor Standards Act, and proposed changes to the Part 541 regulations on overtime. With WHD being understaffed, it is anyone's guess when—or if—we will see any of these proposals in 2019.

### National Labor Relations Board

In 2019, the NLRB will look to accomplish much of its policy agenda for as long as it will enjoy a 3 to 1 Republican to Democrat majority. The Republicans' primary objective will be a [final joint employer rule](#), which may be issued sometime in the spring or summer of 2019. A [recent decision by the D.C. Circuit](#) injected more confusion in the joint employer arena, and it will be interesting to see how things play out.

### U.S. Citizenship and Immigration Services

Expect ongoing activity regarding high-skilled visa programs as the administration continues to implement the "Buy American and Hire American" executive order. For example, the administration has issued a proposal that would require employers to preregister H-1B candidates that it hopes to finalize in time for the FY 2020 cap season this spring (though this would be an aggressive timeline). Additionally, watch for a potential regulation to remove certain H-4 spouses of H-1B nonimmigrants as a class of aliens eligible for employment authorization. Continuing its practice over the last two years, U.S. Citizenship and Immigration Services (USCIS) will likely continue to augment its formal regulatory agenda with subregulatory guidance documents that change policy, but don't have to go through the cumbersome Administrative Procedure Act drafting process.

STATE  
and  
INTERNATIONALR  
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## ARIZONA

The [Winslow City Council recently passed Ordinance No. 1327](#). The ordinance specifically makes it unlawful for an employer to refuse to hire, refuse to employ, bar, discharge from employment, or otherwise discriminate on the basis of gender identity, sexual orientation, or familial status, in compensation or in the conditions or privileges of employment.



## CALIFORNIA

[California's minimum wage rate increased on January 1, 2019](#), to \$12.00 per hour for businesses employing 26 or more employees and \$11.00 per hour for those with 25 or fewer employees. The increase is a result of California Senate Bill 3, which was signed into law in 2016.



## CONNECTICUT

As of January 1, 2019, [Connecticut employers are prohibited from inquiring about prospective employees' wage or salary histories](#). Under the new law, employers are also prohibited from using a third party to inquire about any applicant's wage or salary history. Employers may still inquire about the components of an applicant's compensation structure (e.g., retirement benefits or stock option plans), but they may not inquire about the value of any individual component.



## ILLINOIS

Last year, [the Illinois General Assembly amended the Wage Payment and Collection Act](#) to mandate that employers reimburse employees for all expenses incurred within the scope of their employment that are "directly related to services performed for [their] employer[s]." The new law, which went into effect on January 1, 2019, allows employers to establish written policies specifying the amounts and requirements for any such expenses. Employers will not be required to reimburse expenses for employees who fail to comply with these written policies.



## MEXICO

The [Mexican National Commission on Minimum Wages \(Comisión Nacional de los Salarios Mínimos, or CONASAMI\)](#) issued a resolution to increase the daily general minimum wage (DGMW) beginning on January 1, 2019. The new DGMW for 2019 is \$97.79 Mexican pesos, which is approximately \$4.8 United States dollars.



## MICHIGAN

On December 14, 2018, [Governor Rick Snyder signed the Paid Medical Leave Act into law](#). The Act, which will go into effect on March 29, 2019, requires covered employers to provide paid sick leave to many of their Michigan-based employees. Employees will accrue paid medical leave at a rate of one hour for every 35 hours actually worked. However, employees cannot accrue more than one hour in a calendar week or more than 40 hours per benefit year.



## MINNESOTA

[Minimum wage rates for employees of the largest businesses in St. Paul will increase to \\$15.00 per hour on July 1, 2022](#). Other businesses in St. Paul will be required to meet the wage hike between July 1, 2023, and July 1, 2027, depending on their size.



## MISSOURI

The [Missouri Supreme Court recently addressed arbitration agreements in the context of an employee-employer work relationship](#). In *Soars v. Easter Seals Midwest*, the court held that arbitration must be compelled by a trial court if the parties signed an agreement that contains a valid delegation clause mandating that the arbitrator has "exclusive authority to decide threshold issues of interpretation, applicability, enforceability, or formation."



## NEW YORK

Effective December 31, 2018, the salary basis thresholds for some executive and administrative exempt employees, the minimum wage rate, and the permitted tip credits and uniform maintenance pay, among other things, increased. For a summary of the key increases, visit [www.ogletree.com/our-insights](http://www.ogletree.com/our-insights) or click [here](#).



## OREGON

On November 19, 2018, the [Oregon Bureau of Labor and Industries issued its final administrative rules relating to the state's Equal Pay Law](#), which prohibits pay discrimination on the basis of protected class, as well as screening job applicants based on current or past compensation. The rules establish definitions for several key words in the law, provide more concrete guidance on how to meet the law's posting requirements, and seek to clarify certain provisions of the law related to screening job applicants based on salary history.



## TEXAS

On November 16, 2018, the [Third Court of Appeals in Austin, Texas, entered a temporary injunction blocking the implementation of the paid sick leave ordinance that the Austin City Council passed in February 2018](#). The court of appeals ruled that the ordinance violated the Texas Constitution because it is preempted by the Texas Minimum Wage Act.



## WISCONSIN

[A federal judge in Wisconsin recently held that assurances made by an HR coordinator before an employee's one-year anniversary may give rise to a viable interference claim](#) under the Family and Medical Leave Act. The case is *Reif v. Assisted Living by Hillcrest LLC d/b/a Brillion West Haven*.



## TIPS FOR SUCCESSFUL CHANGE MANAGEMENT

by Suzanne J. Willis, *Director of Billing, Revenue & Accounts Payable*

As the saying goes: “It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change.” We live in a change management world, constantly adapting to clients’ needs through new technology, innovations, and process improvements. But sometimes that steady stream of change can be challenging for even the most productive employees.

# PERSPECTIVES

Here are some TIPS to help lead others through change and transition:

### 1. Let Go of the Past

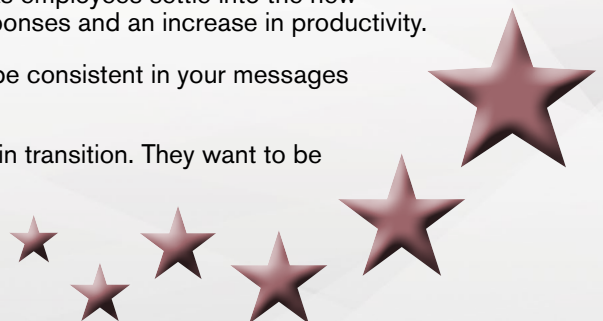
- For those steeped in tradition, this can be especially difficult. Acknowledge the loss openly and sympathetically. It’s okay to have feelings of shock, anger, disbelief, and sadness.
- Accept the finality of the situation. You may even want to host a party before you leave your old office location or discontinue a software application.
- Sell the problem first. Before trumpeting the fabulous advantages of the new, talk respectfully about the problems with the old.
- It’s all about inclusion. Give people information again and again. Never assume people understand the reasons behind the change. They want to know why the change is important to them.

### 2. Be Open-Minded During a Period of Transition

- During a transition, people will feel disoriented and rumors will abound. You may see a lack of motivation and lower productivity.
- However, you will also see potential breakthroughs and innovations as the change gains momentum.
- Be optimistic. Share information as you receive it. Strengthen your team members by helping them embrace uncertainty.
- Involve others in designing the “new.” Create labs or think tanks. Give people the opportunity to provide feedback.
- Stay involved. Don’t delegate the responsibility of communication to your managers and expect that everything will function as you intended.

### 3. Accept the Change and Move Forward

- There is comfort in the new normal. As employees settle into the new vision, you will see more positive responses and an increase in productivity.
- Continue to provide clear goals and be consistent in your messages and actions.
- Monitor the well-being of employees in transition. They want to be successful in their roles.
- **Celebrate individual successes!**



# NAVIGATIONAL TOOLS

## MARIJUANA MADNESS: THE LATEST ON DRUG TESTING LAWS

Multistate employers may be finding it difficult to keep pace with the patchwork of state and local drug testing laws. In addition to legalizing medical and/or recreational marijuana, states are passing laws that directly impact the workplace by prohibiting discrimination against medical marijuana cardholders (and, in Maine, recreational users) or discrimination based solely on positive drug tests for marijuana. Please see the graphics that illustrate the latest updates in this rapidly-changing area.



Rayna H. Jones  
(Phoenix)

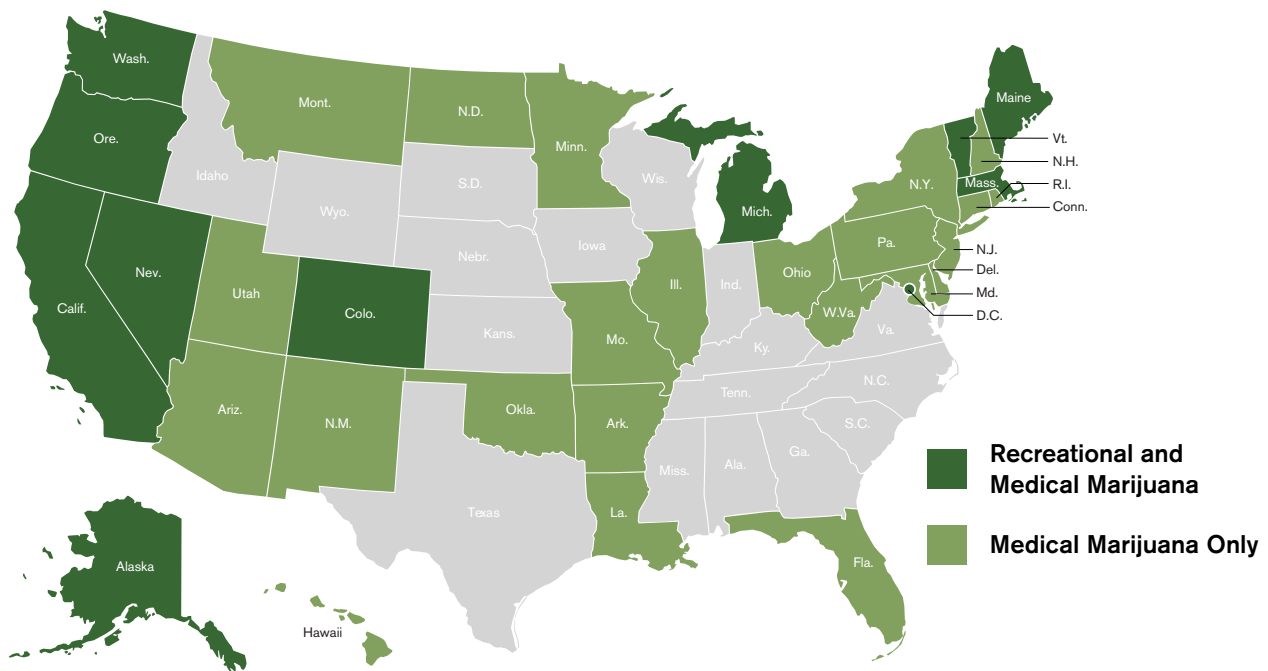


Austin E. Smith  
(Denver)

States That Prohibit Discrimination Against Employees Based on Their Status as Medical Marijuana Cardholders or Based on Detectable Levels of Marijuana in Their System



The patchwork of marijuana-related laws across the United States has created compliance complications for multistate employers. This map highlights the states that allow medical and/or recreational marijuana.





# ON THE RADAR

## THE FUTURE IS NOW: A Q&A ON ARTIFICIAL INTELLIGENCE AND THE LEGAL INDUSTRY

by Patrick V. DiDomenico, *Chief Knowledge Officer*

*Ogletree Deakins recently partnered with LegalMation, an innovative platform that leverages artificial intelligence (AI) to automate routine discovery and litigation tasks. Patrick DiDomenico, Ogletree Deakins' Chief Knowledge Officer, teamed up with Thomas Suh, LegalMation's President and Co-Founder, to talk about AI in the legal industry and how LegalMation works.*



**Q** Artificial intelligence is very popular these days. What is it and how can the legal industry benefit from it?

**A** (Thomas) At its core, AI can be distilled as the capability of machines (i.e., algorithms) to understand and make certain decisions similar to humans. From the layperson's perspective, AI is arguably nothing more than a highly sophisticated pattern recognition system that is able to process data, understand the relationships between the various data, and make decisions based on that data. All this is possible today due to three main factors: computer processing power, massive digital data availability, and sophisticated algorithms.

For purposes of the legal industry, AI's pattern recognition capabilities and ability to process massive amounts of data provide for an incredible opportunity to address the volume/process driven tasks that lawyers and other legal professionals have traditionally performed. Think document review, contract analysis, legal research, etc. By efficiently and effectively having AI systems handle these common tasks, lawyers can elevate themselves to address the more cognitively-demanding tasks that are not (at least not yet) easily addressable by AI. As such, AI can have a tremendously positive impact on the legal industry.

**Q** What is LegalMation and how does it work?

**A** (Thomas) LegalMation uses a novel application of AI technology to deliver actual work product comparable to what an attorney or paralegal would produce during various stages of litigation. LegalMation focuses on automating the drafting of volume/process driven documents at every stage of litigation. This in turn allows attorneys, both at law firms and in-house, to adapt and thrive in the new, transformed legal market, allowing them to offer their clients not only significant and direct-to-bottom-line savings, but also greater transparency and reliability.

LegalMation addresses two litigation pain points. The Complaint Analyzer automates the initial drafting of an answer and initial set of written discovery (requests for production and interrogatories) in approximately two minutes, the same work product that can take a typical junior attorney multiple hours to complete. The Discovery Request Analyzer automatically generates a written discovery response shell, with suggested targeted objections, in a few seconds. Depending on the number of rounds of written discovery and actual discovery requests, this module can save several hours of document preparation time.

**A** (Patrick) The beauty of LegalMation is that busy lawyers don't need to worry about the sophisticated technology "under the hood." It's the simplicity of the technology that makes it even more useful. It takes no skill to drag and drop, or upload, a complaint. That's all you have to do and the system does everything else. It frees up lawyers to focus on the content and legal issues.

**Q** How is artificial intelligence related to knowledge management?

**A** (Patrick) AI can promote—and dramatically improve—knowledge management (KM). One of the fundamental goals of KM is to make work more efficient by enabling lawyers to avoid "reinventing the wheel." Non-AI tools rely on search engines and "copy and paste" functions. You search for a model document, copy certain parts, and then manually modify a new document by pasting relevant portions of the model into the new document. AI-based tools, like LegalMation, are a huge leap forward because they eliminate the searching and copy and paste steps. While AI-based tools also rely on model documents, they automatically create new documents without the need for someone to manually find a model and to copy and paste sections into a new document. As a result, efficiency skyrockets and attorneys are left with more time to focus on higher-level analysis.

**Q** Why did Ogletree Deakins and LegalMation collaborate and form this partnership?

**A** (Patrick) When I heard about LegalMation, I was skeptical. But when I saw the tool in action, I was convinced of its value. We did a pilot program with attorneys in our California offices to make sure that it worked as expected. The pilot program was a great success. After discussing it more deeply with Thomas and James Lee [LegalMation's Co-Founder and CEO], we saw their vision of applying AI to additional areas of the litigation process. We felt that partnering with them to help accelerate that vision could be beneficial to our clients and the firm.

**A** (Thomas) LegalMation is specifically designed for higher volume litigation practice areas, such as employment. Not only will Ogletree Deakins help LegalMation improve its current employment litigation solution, but the partnership will enable LegalMation to tackle new areas such as data analytics and pre-litigation tasks.

## ALONG THE ROAD

## ROAD

STATS  
AND  
TRENDS

- 1.** In fiscal year (FY) 2018, the U.S. Equal Employment Opportunity Commission (EEOC) resolved 141 lawsuits and filed 199 lawsuits on behalf of individuals alleging discrimination. The EEOC resolved 90,558 private and public sector charges in FY 2018.

(SOURCE: *The EEOC's Fiscal Year 2018 Highlights*)

- 2.** In September of 2018, the U.S. unemployment rate hit a 49-year low of 3.7 percent.

(SOURCE: *BBC*)



- 3.** In 2017, 77.34 million adults in the United States (30.3 percent of the adult U.S. population) volunteered through an organization. Altogether, Americans volunteered nearly 6.9 billion hours, worth an estimated \$167 billion in economic value, based on nonprofit organization Independent Sector's estimate of the average value of a volunteer hour.

(SOURCE: *2018 Volunteering in America Report*)

- 4.** HR industry studies show that up to 20 percent of staff turnover occurs within the first 45 days of employment.



(SOURCE: *Forbes*)

- 5.** Individuals born in the latter years of the baby boom (1957–1964) held an average of 11.9 jobs between the ages of 18 and 50 years old. Nearly half of those jobs (an average of 5.5 jobs per person) were held from ages 18 to 24. The average fell to 4.5 jobs from ages 25 to 34; 2.9 jobs from ages 35 to 44; and 1.7 jobs from ages 45 to 50.

(SOURCE: *Bureau of Labor Statistics, U.S. Department of Labor*)

- 6.** Of workers engaged in four alternative employment arrangements—people employed as independent contractors, on-call workers, temporary help agency workers, and workers provided by contract firms— independent contractors were the largest category, with 10.6 million independent contractors making up 6.9 percent of total employment in May 2017.



(SOURCE: *Bureau of Labor Statistics, U.S. Department of Labor*)

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## *Seventh Annual*

### **PROGRAM AGENDA**

**FEBRUARY 27–MARCH 2, 2019**

#### **LOCATION**

Silverado Resort and Spa  
1600 Atlas Peak Road  
Napa, CA 94558  
(707) 257-0200

#### **COST**

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

#### **REGISTRATION**

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**EMPLOYMENT LAW &  
CABERNET**

HRCI, SHRM, and CLE credit is anticipated for this program. To confirm whether CLE is available in your state, please email [cle@ogletree.com](mailto:cle@ogletree.com) in advance.



## WEDNESDAY, FEBRUARY 27, 2019

2:00 – 6:00 p.m. **Early Registration**

3:00 – 6:00 p.m. **“It’s Crazy Out Here!” What Employers Need to Know to Survive in the California Employment Law Jungle**

Navigating the twists and turns of California employment law can be treacherous for even the most experienced in-house counsel and HR professionals. From thousands of Labor Code provisions that regulate almost every aspect of the employment relationship to the decisions handed down by the California courts, there are plenty of land mines for employers. If your company has employees in California or is thinking about having employees in the Golden State, you must be prepared to deal with the complexities of California law. This primer on California employment law will focus on the legal issues that create the most headaches for in-house counsel and HR professionals.

*Speakers:* Becki Graham, *Employment Counsel – Americas*, Agilent Technologies, Inc.  
Betsy Johnson (Los Angeles) • Christopher W. Olmsted (San Diego)

6:00 – 7:30 p.m. **Welcome Reception**

## THURSDAY, FEBRUARY 28, 2019 (DAY 1 AGENDA)

8:00 – 8:45 a.m. **Registration and Breakfast**

8:45 – 9:00 a.m. **Welcome and Opening Remarks**

Joseph L. Beachboard, *Managing Director*, Ogletree Deakins  
C. Matthew Keen, *Managing Shareholder*, Ogletree Deakins

9:00 – 10:00 a.m. **What’s New in California Employment Law**

Each new year brings new challenges for organizations doing business in the Golden State. And not all of them make employment law headlines. This session will highlight the latest developments, with a special focus on the practical ramifications for your organization. This session will address key legislative developments, the most significant case rulings, marijuana and the workplace, new regulations from Cal/OSHA, union activity in California, and much more.

*Speakers:* Maria Anastas (Los Angeles) • Kevin D. Bland (Orange County) • Christopher W. Olmsted (San Diego)  
Michael J. Sexton (Orange County) • Special Guests

10:00 – 10:45 a.m. **Arbitration Agreements in California Post–Epic Systems: Pros and Cons, Drafting Tips, and Logistics**

Last May, the Supreme Court of the United States made clear that class action waivers in employment arbitration agreements are enforceable. However, in California there are continuing hurdles to resolving disputes through arbitration rather than litigation. California employers must carefully draft such agreements so they don’t run afoul of state law requirements. This session will discuss the latest developments, help employers determine whether arbitration is right for them, share tips for examining existing programs, and provide practical tips to minimize legal attacks.

*Speakers:* Michelle Bussarakum, *Employment Counsel*, Lyft • Thomas M. McInerney (San Francisco)  
Jennifer L. Santa Maria (San Diego)

10:45 – 11:15 a.m. **Break**

11:15 a.m. –  
12:15 p.m. **California Wage and Hour Developments: The Latest (and Not So Greatest) Changes Impacting Employers**

Over the past year, the courts and state legislature have been hard at work redefining the basic requirements for how employees must be paid in California. Our wage and hour attorneys will cover the new rules for classifying independent contractors, California’s new de minimis test and what is now considered “hours worked,” recent attacks on “unlimited vacation” plans, developing risks in reporting time pay, business expenses that must now be reimbursed, payments that must now be included in the regular rate of pay, Private Attorneys General Act (PAGA) developments, and more!

*Speakers:* Patricia A. Matias (Orange County) • Evan R. Moses (Los Angeles)  
Sean N. Pon, *Assistant General Counsel*, Aderans America Holdings, Inc. | Bosley, Inc.  
Robert R. Roginson (Los Angeles)

12:15 – 2:00 p.m. **LUNCH AND KEYNOTE PRESENTATION: California’s Blue Tsunami—What It Means for Employers**



California was hit with a political blue tsunami on November 6, 2018. In 2019, Democrats will hold six times the number of congressional seats as Republicans, all statewide constitutional offices (including new Governor Gavin Newsom), and veto-proof supermajorities in both houses of the legislature. This will have a significant impact on all California employers. As the home of former Republican presidents Richard Nixon and Ronald Reagan, how did we get here and what does it mean for the future of the Golden State? Join author and columnist Dan Walters for what is sure to be an insightful presentation.

*Special Guest:* Dan Walters, *Author and Columnist*

2:00 – 2:15 p.m. **Break**

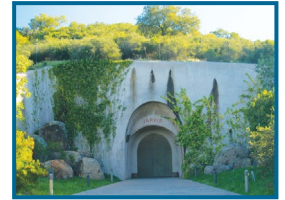
2:15 – 3:15 p.m. **Be Right Back . . . or Not: Managing California Employee Protected Leaves**

California is renowned for its many varieties of protected leaves—and the challenges they create for companies with employees in the state. In this session, our panel will decanter recent additions and amendments to parental leave, paid family leave, and other state and local leave laws. The panelists will pry open a few cases focusing on employee leave rights—and employer interference with such rights. Finally, attendees will sample a flight of recent employer benefit initiatives, including paid parental leave and unlimited paid time off.

*Speakers:* Katie Acevedo, *Associate General Counsel*, Sephora USA, Inc. • Gregory C. Cheng (San Francisco)  
Candace Gomez Harrison (Orange County) • Charles L. Thompson IV (San Francisco)

## THURSDAY, FEBRUARY 28, 2019 (continued)

- 3:15 – 3:45 p.m. The Most Bizarre Employment Cases of 2018—California Style**  
California is famous for crazy employment law news, and 2018 was a banner year. While the entertainment value is high (we hope), there is a learning (and therapeutic) component to examining the mistakes of others and the truly weird world of California employment law. This session is a great way to end our first day!  
*Speaker:* Joseph T. Clees (Phoenix)
- 3:45 – 4:00 p.m. Closing Remarks**
- 5:00 – 8:00 p.m. Wine Tasting Reception and Dinner**  
You won't want to miss our hosted wine tasting and dinner at Jarvis Estate Winery and Cave. The Jarvis Estate winemaking facility is entirely contained within 45,000 square feet of cave tunneled into the scenic Vaca Mountains, four miles east of downtown Napa. It is not only a visual masterpiece, but a technical masterpiece that everyone will be sure to enjoy.



## FRIDAY, MARCH 1, 2019 (DAY 2 AGENDA)

- 8:00 – 8:45 a.m. Breakfast**
- 8:45 – 9:00 a.m. Welcome and Day Two Conference Kickoff**
- 9:00 – 10:00 a.m. Discrimination and Harassment in the #MeToo Era: Complying With California's Web of Prevention Requirements**  
California has long been at the forefront of discrimination and harassment law. In this overview of legal requirements and best practices, our experienced panel will cover new legislation that dramatically limits the chances of employers prevailing in harassment cases in California. The panel will discuss legally required content for your harassment and discrimination prevention policies, recent changes in training requirements, required distributions, and new rules governing settlement agreements. In addition, they will review new California Fair Pay Act legislation for responding to applicant salary range requests, as well as rules on employer policies restricting disclosure of pay.  
*Speakers:* Dennis A. Davis, Ph.D. (Torrance) ▪ Douglas J. Farmer (San Francisco)  
Erika Frank, *Executive Vice President, Legal Affairs, and General Counsel,* California Chamber of Commerce ▪ Danielle Ochs (San Francisco)
- 10:00 – 10:40 a.m. Jurors' Views on Workplace Harassment: New Study Shows Risks for Employers**  
The #MeToo movement has altered how employers evaluate harassment claims, specifically with respect to trials involving these claims. The panel will analyze a new study of juror attitudes that provides insights on issues such as the perceived extent of harassment in the workplace, the expectations of Corporate America, what constitutes "notice," and determining appropriate punishment for inappropriate behavior. The panelists will also examine where there are gender differences in attitudes—and where there are not. Finally, this session will address the implications for employers.  
*Speakers:* Dan R. Gallipeau, Ph.D., *President,* Dispute Dynamics, Inc. ▪ Vince M. Verde (Orange County)
- 10:40 – 11:00 a.m. Break**
- 11:00 a.m. – Noon Be Reasonable! Analyzing California's Religious, Disability, and Pregnancy Accommodation Requirements**  
California law imposes unique requirements on employers to accommodate employees when religion, disability, and/or pregnancy limit their ability to perform certain job duties. Our panel will explain these requirements (and how they differ from federal standards) and what's considered to be "reasonable." The session will also examine who decides what's reasonable, as well as what lies ahead in this area of increasing risk (and litigation) for employers with workers in California. The panel will conclude with specific strategies for meeting these expectations while still running your business.  
*Speakers:* Shannon Alexander, *Litigation Counsel,* NBCUniversal ▪ Tracie L. Childs (San Diego)  
Anthony J. DeCristoforo (Sacramento) ▪ David Raizman (Los Angeles)
- Noon – 1:00 p.m. LUNCH AND SMALL GROUP DISCUSSIONS (Led by Speakers From Each Presentation)**  
This popular session will provide an opportunity to discuss the topics of the prior two days with various speakers from the program. One or more speakers will be assigned to each table of guests. In addition, the attendees will help develop talking points for the panel discussion that will follow later in the afternoon.
- 1:00 – 1:15 p.m. Break**
- 1:15 – 2:00 p.m. "Don't Let Me Hear You Say That Again!" Managing a Multilingual Workforce in California (Without Getting Sued)**  
Census data indicates that 57 percent of Silicon Valley tech workers were born outside of the United States and 27 percent of all California residents are foreign-born. As the workplace continues to become more diverse, employers are striving to foster an inclusive work environment. This can be difficult when employees speak to each other, customers, clients, and vendors in different languages. Some employers try to solve this problem by implementing language restrictions; however, requiring English only at work can run afoul of California laws and new regulations on national origin discrimination. This session will discuss the steps employers can take to create a workplace that is safe, productive, and inclusive within the parameters established by California laws and regulations, including how to craft a compliant workplace language policy.  
*Speakers:* Lisa C. Hamasaki (San Francisco) ▪ Betsy Johnson (Los Angeles)  
Ellen M. Papadakis, *Assistant General Counsel, Legal,* Astellas US LLC

(Agenda continued on back)

## FRIDAY, MARCH 1, 2019 (continued)

### 2:00 – 2:45 p.m. **The Inside Perspective on Managing a California Workforce**

The Golden State is among the most employee-friendly jurisdictions in the world. Seven-figure jury verdicts and employment class action lawsuits abound. California's employment laws are unique, frequently changing, and rarely make things easier for employers. Being an employment attorney or HR practitioner in the Golden State can feel like working in a different country altogether. Our panel will provide an insider's perspective on the special challenges they face when navigating California's unique legal landscape. They will share lessons and helpful strategies learned from decades of experience. The panel includes a general counsel at a publicly traded company and a vice president of HR from a large national employer.

*Speakers:* Robert N. Sacks, *EVP and General Counsel*, SP Plus Corporation • Spencer C. Skeen (San Diego)  
Timothy R. Taylor, *Vice President—Human Resources*, Hendrick Automotive Group

### 2:45 – 3:00 p.m. **Break**

### 3:00 – 4:00 p.m. **Successfully Navigating California's Challenges—A Group Endeavor**

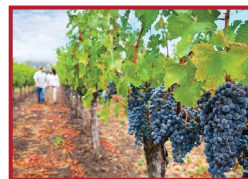
In this session, presenters will provide key takeaways from each of the sessions from the prior two days. The topics to be addressed will include those raised by each table during lunch.

*Moderator:* Jack S. Sholkoff (Los Angeles)

### 4:00 – 4:15 p.m. **Day Two Closing and Grand Prize Drawing**

### 5:30 – 6:30 p.m. **Wine Tasting Reception**

### 6:30 p.m. **Dinner and Exploring Downtown Napa (On Your Own)**



## SATURDAY, MARCH 2, 2019 (DAY 3 AGENDA)

### 8:00 – 9:00 a.m. **Breakfast, Networking, and Best Practices Discussions**

### 9:00 – 11:00 a.m. **Preparing to Be an Effective Deposition Witness in California—An Interactive Experience**

Being deposed as a witness in the Golden State can be daunting. Depositions may lead to successful summary judgment motions and settlements. However, a lack of deposition preparation can sound the death knell for a case. Given the many different employment law claims being brought in California and the tactics used by plaintiffs' counsel, proper deposition preparation is critical. During this session, seasoned Ogletree Deakins litigators will provide you with their insights on how to best be prepared for deposition. The session will include examples from a variety of California claims, live demonstrations, and audience participation. At the end of this two-hour interactive experience, you will be more than ready should you receive a deposition notice.

*Speakers:* Marrian S. Chang (Los Angeles) • Katessa Charles Davis (Los Angeles)  
Pablo I. Fabian, *Associate General Counsel*, National University System  
Michael J. Nader (Sacramento) • Frank L. Tobin (San Diego)

### 1:00 – 5:30 p.m. **Wine Tasting Tour (an additional fee of \$95 per person covers luxury coach transportation and two wine tastings)**

## Registration Information

CALIFORNIA  
Ogletree Deakins 125  
LAWYERS

## NAVIGATING CALIFORNIA EMPLOYMENT LAW

A Strategic Program for Multistate Employers

### REGISTRATION

Online: [www.ogletree.com](http://www.ogletree.com)

Email: [ODEvents@ogletree.com](mailto:ODEvents@ogletree.com)

### HOTEL RESERVATIONS

Hotel reservations are the responsibility of participants and can be made by calling Silverado Resort and Spa directly at (800) 532-0500 and requesting the Ogletree Deakins rate of \$209 per night. A limited number of rooms is available, so please make your reservations as early as possible. Reservations must be made by February 5, 2019, to receive this group rate.

Please let us know if you require any special services or accommodations.

### DATE

February 27–March 2, 2019

### LOCATION

Silverado Resort and Spa  
1600 Atlas Peak Road  
Napa, CA 94558  
(707) 257-0200



### COST

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

January

Jan 15	Webinar	<a href="#">Be Aware and Prepare: Mental Illness and Violence in the Workplace</a>
Jan 16	Webinar	<a href="#">News for the New Year: GDPR Update for Employers</a>
Jan 23	Webinar	<a href="#">Marijuana in Michigan: An Update for Employers</a>
Jan 31	Spartanburg, SC	<a href="#">Employment Law Briefing</a>

February

Feb 7	St. Louis	<a href="#">Employment Law Briefing</a>
Feb 7	Birmingham	<a href="#">Employee Benefit Mistakes You Will Make This Year (If You Are Not Prepared)</a>
Feb 12	Tampa	<a href="#">OD Works! Navigating Challenging Obstacles: Accommodating Difficult Situations Under the ADA</a>
Feb 12	Minneapolis	<a href="#">"Reel" Ethics</a>
Feb 22	Las Vegas	<a href="#">Managing a Workforce in 2019</a>
Feb 27- Mar 2	Napa	<a href="#">Navigating California Employment Law</a>

March

Mar 12	Tampa	<a href="#">OD Works! Ahead of the Trend: Preventing, Spotting, and Correcting Retaliation Issues in the Workplace</a>
Mar 21	Carmel, IN	<a href="#">Employment Law Briefing</a>
Mar 21	Birmingham, MI	<a href="#">Employment Law Briefing</a>
Mar 26	Franklin, TN	<a href="#">Employment Law Briefing</a>
Mar 28	Washington, DC	<a href="#">International Practice Group Symposium</a>

April

Apr 4	New York	<a href="#">Managing a Workforce in New York, New Jersey, and Connecticut</a>
Apr 9	Tampa	<a href="#">OD Works! Immigration Boot Camp for HR Professionals</a>
Apr 30- May 1	Las Vegas	<a href="#">Employee Benefits and Executive Compensation Symposium</a>
Apr 30- May 1	Las Vegas	<a href="#">In the Business: The Hospitality Symposium</a>

May

May 1-4	Las Vegas	<a href="#">2019 National Workplace Strategies Seminar</a>
May 7	Tampa	<a href="#">OD Works! OSHA Recordkeeping and Reporting Workshop</a>