

WiFi Code: nela16



PROGRAM

WEDNESDAY, JUNE 22, 2016

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| 9:00–10:00 a.m. | 2016 Affiliate Leadership Workshop Registration & Networking Breakfast
<i>(By Invitation Only)</i> | <i>Santa Anita, Lobby Level</i> |
| 10:00 a.m.–5:00 p.m. | 2016 Affiliate Leadership Workshop & Forum
<i>(By Invitation Only)</i> | <i>Santa Anita, Lobby Level</i> |
| 12:00–8:00 p.m. | 2016 Annual Convention Registration | <i>San Diego Registration Booth, 2nd Level</i> |
| 2:00–3:30 p.m. | NELA Committee & Practice Group Chairs Meeting
<i>(By Invitation Only)</i> | <i>Palos Verdes, Lobby Level</i> |
| 6:30–8:00 p.m. | President's Welcome Reception
Convention participants are invited to join NELA President Alicia K. Haynes, the NELA Executive Board, and the 2016 Annual Convention Committee for an informal gathering to celebrate 31 years of employee rights advocacy, renew friendships, and make new ones. First-time Convention participants are especially encouraged to attend. | <i>California Foyer, 2nd Level</i> |

*The President's Welcome Reception is generously co-sponsored by
AARP Foundation Litigation and the California Employment Lawyers Association.*



THURSDAY, JUNE 23, 2016

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| 7:00–9:00 a.m. | 2016 Annual Convention Registration

Continental Breakfast
<i>Continental breakfast is available to Convention registrants only.</i> | <i>San Diego Registration Booth, 2nd Level</i>

<i>California Foyer, 2nd Level</i> |
| 8:30–9:30 a.m. | Roll Call Of The States & Opening Remarks
<i>Paul H. Tobias, NELA Founder; Alicia K. Haynes, NELA President & Terisa E. Chaw, NELA Executive Director</i> | <i>San Francisco/Sacramento Ballroom, 2nd Level</i> |
| 9:30–10:45 a.m. | Implicit Bias In The Courtroom
<i>Moderator/Speaker: Charlotte Fishman</i>
<i>Speakers: The Honorable Bernice B. Donald, Professor Anthony Greenwald & Therese M. Lawless</i>
Given the substantial and growing scientific and popular literature on implicit bias in everyday life, the time has now come to address a number of questions: How can we use the latest knowledge about the operation of implicit biases (cognitive, stereotype, ingroup/outgroup) to enhance our ability to prevail in cases alleging discrimination in the workplace? What tools do plaintiff-side employment lawyers have to counter bias at key junctures, whether in arguing pre-trial motions, during jury selection, or at various points during the trial itself? Are there “de-biasing” techniques that our members have used to level the playing field for plaintiffs? Have they been effective or counterproductive? Are there innovative ways we can reframe certain types of cases (e.g., failure to hire or promote; disparate treatment; hostile work environment) that can strengthen a jury's ability to connect the dots between differential treatment and plaintiff's protected status? NELA members will have an opportunity to engage in a conversation with a distinguished panel of experts about how the science of implicit bias has changed the practice of employment law in the 21st century, and to share “lessons learned” in the ongoing battle to overcome fact-finder bias in the courtroom. | <i>San Francisco/Sacramento Ballroom, 2nd Level</i> |
| 10:45–11:00 a.m. | BREAK | <i>California Foyer, 2nd Level</i> |

Program subject to change without notice.

11:15 a.m.–12:15 p.m.	<p>Litigating Under The New Federal Rules Of Discovery <i>San Francisco/Sacramento Ballroom, 2nd Level</i></p> <p><i>Moderator/Speaker: Jennifer I. Klar</i></p> <p><i>Speakers: The Honorable David G. Campbell & The Honorable Lee H. Rosenthal</i></p> <p>Proportionality will be the new buzzword in discovery, and there are other changes to the Federal Rules of discovery that you need to know to litigate effectively on behalf of your clients. The Federal Judicial Center and Duke Law School have convened numerous sessions in cities across the country to educate judges, law clerks, and lawyers who pay the admission fee, about guidelines and best practices to use to enforce the new discovery rules. Besides this significant educational effort, there is developing case law interpreting the application of the new rules. Our distinguished panelists, who are veterans of the proportionality skirmishes throughout the country, will share strategies and tips that you can use to take advantage of the new rules and to minimize any adverse impact on your cases.</p>
12:15–1:45 p.m.	<p>Annual Luncheon <i>Catalina Ballroom, 3rd Level</i></p> <p>The Annual Luncheon is included in the registration fee for Convention registrants only. Guest tickets for the Annual Luncheon may be purchased at the Registration Booth or at the door.</p>
2:00–3:15 p.m.	<p>CONCURRENT SESSIONS</p>
<i>Discovery</i>	<p>How To Deal With Discovery Of ESI <i>San Francisco Ballroom, 2nd Level</i></p> <p><i>Moderator/Speaker: Linda M. Correia</i></p> <p><i>Speakers: Brian E. Koncius & Ariana J. Tadler</i></p> <p>Our panelists will discuss strategies to ensure you obtain everything that is relevant and responsive to your discovery requests for production of electronically stored information. Among the issues they will address are: (1) preparing for a Rule 26(f) conference on these issues; (2) when it is beneficial to conduct a 30(b)(6) deposition of an IT person to learn about storage systems and how information is stored; (3) identifying search terms without eliminating responsive information you should be getting; (4) if you know the defendant is using technology assisted review, how your clients can benefit from it without falling into the proportional expense trap; and (5) ascertaining custodians whose ESI should be searched.</p>
<i>Nuts & Bolts</i>	<p>Workplace Investigations From Start To Finish <i>San Gabriel A & B, Lobby Level</i></p> <p><i>Moderator/Speaker: Michelle Matheson</i></p> <p><i>Speakers: Sue Ellen Eisenberg & Keith Rohman</i></p> <p>Whether it is an investigation of a sexual harassment allegation, an investigation relating to an EEOC charge, or an investigation of a problem employee, you need to be prepared before you begin. This session will provide a practical overview and a step-by-step guide of workplace investigations, with special emphasis on pre-investigation considerations. Topics will include such critical issues as how and when to start an investigation, who should conduct the investigation, who should be interviewed and in what order, what questions should be asked, and how to document your conclusions.</p>
<i>Trial Advocacy</i>	<p>Proving A Pregnancy Discrimination Case After <i>Young v. UPS</i>: Comparators, Statistics & Accommodation <i>Beaudry B, Lobby Level</i></p> <p><i>Moderator/Speaker: Brian East</i></p> <p><i>Speakers: Sharon Fast Gustafson & Liz Morris</i></p> <p>The U.S. Supreme Court's decision in <i>Young v. UPS</i> last year created a new and complicated burden shifting scheme under the familiar <i>McDonnell Douglas</i> standard. The application of this standard in reasonable accommodation cases for pregnant workers will depend on how federal district and circuit courts construe (adapt, explain, broaden, or narrow) this new standard. <i>Young</i> is ripe for judicial interpretation and a first year review of its impact is essential for practitioners in this field to know. It may be that relying on the Pregnancy Discrimination Act is not the best way to litigate accommodation cases when state and local governments are increasingly passing accommodation bills that focus on needs test as a basis for requesting accommodation, as opposed to having to prove one's client has a disability. NELA members cannot ignore the import of <i>Young</i> and its progeny.</p>
<i>Wage & Hour Law</i>	<p>The ABC's Of Litigating Wage & Hour Collective And Class Actions <i>San Jose Ballroom, 2nd Level</i></p> <p><i>Moderator/Speaker: Anna P. Prakash</i></p> <p><i>Speakers: William C. Jhaveri-Weeks, Lawrence Morales II & Michael D. Palmer</i></p> <p>From making the right allegations to writing a persuasive brief to front-end loading your case with consents from opt-ins, this panel will examine the basics of how to litigate collective actions under the FLSA and class actions under applicable state laws. Our expert practitioners will explain how to address scheduling issues, getting people to join the case (even before it is filed), and how to improve the chances for conditional or class certification. They will also discuss discovery plans and litigating throughout the merits phase. Whether you are looking at a local case with a few potential class members or a companywide case with thousands of potential participants, practitioners who have never handled these cases or only handled a few of them will benefit from the panelists' advice and learn how to avoid pitfalls in this type of litigation.</p>

2:00–3:15 p.m.

CONCURRENT SESSIONS

**California
Employment Law****Incorporating The Newly Adopted Employment Regulations Into
A Winning Litigation Strategy****Sacramento Ballroom, 2nd Level***Moderator/Speaker: Brian C. Sperber**Speakers: Rachael Langston & Joan Herrington*

Our panelists will provide a comprehensive review of the amendments to Fair Employment and Housing Act and California Family Rights Act regulations that were recently promulgated and adopted by the California Fair Employment and Housing Council, and will discuss the ways in which the new regulations can be used to supplement and strengthen the arguments that practitioners make on behalf of their clients.

Representing The Executive Whistleblower**Santa Anita A & B, Lobby Level***Moderator/Speaker: Lisa J. Banks**Speakers: Tammy Marzigliano & Jordan A. Thomas*

Our veteran practitioners will address issues that arise when representing a corporate executive whistleblower, from intake through settlement. When an executive comes into your office for a consultation, what facts might form the basis of a whistleblower claim? The lawyer must be cognizant of these issues, and the questions to ask, as many corporate executives who have been fired (or not) may have whistleblower claims under various federal and state statutes, or possess information that could lead to an award under one of the new whistleblower reward programs, such as the Securities and Exchange Commission (SEC) or Commodity Futures Trading Commission. Because of the unique position held by corporate executives—for example, C-Suite executives, lawyers, and compliance or HR officers—issues may arise that do not for other employees and whistleblowers regarding privilege, fiduciary duty, purloined documents, and, in the case of HR/compliance professionals, the ability to bring claims of retaliation at all. Special issues also arise when drafting settlement agreements for executive whistleblowers, such as for those who have provided information to the SEC Whistleblower Program.

Breaking Into The Field: A How-To Guide For Aspiring Workers' Rights Advocates**Santa Anita C, Lobby Level***Moderator/Speaker: Clark Taylor; Paul H. Tobias Attorney Fellow**Speakers: Jean K. Hyams, Anna Y. Park & Matthew Sirolly*

Law students and recent graduates are invited to join NELA and The Employee Rights Advocacy Institute For Law & Policy (The Institute) for an engaging and interactive discussion on a career in plaintiffs' employment law. Experienced employment law practitioners will answer questions on how to enter the plaintiffs' employment law field and tips on identifying and securing job opportunities in this ever-changing area of the law. The panel will discuss what skills and experience can help law students be successful employee advocates as they begin their legal careers. NELA and The Institute encourage Convention attendees to participate in this program as part of our continued commitment to developing the next generation of employee advocates.

This presentation is co-sponsored by The Employee Rights Advocacy Institute For Law & Policy and the UCLA School of Law, David J. Epstein Program



3:15–3:30 p.m.

BREAK

California Foyer, 2nd Level

3:45–5:00 p.m.

CONCURRENT SESSIONS

Nuts & Bolts**The NLRA Covers Nonunion Employees Too!****Beaudry B, Lobby Level***Moderator/Speaker: Yona Rozen**Speakers: Craig Becker & Thomas J. Gagliardo*

The National Labor Relations Act (NLRA) protects the right to join a union and regulates union-management relations; however, nonunion employees are covered by the NLRA too. Our speakers will review the circumstances under which the NLRA protects non-union workers, such as when they are engaged in concerted activity to improve working conditions, as well as the application of the anti-retaliation provision of the NLRA to employees who in concert with others complain internally about discrimination or sexual harassment and assist with identifying witnesses. They will also discuss class action waivers, access to the employer's electronic communications systems, and social media posts by employees about the workplace.

Trial Advocacy**Picking A Winner****San Francisco Ballroom, 2nd Level***Moderator: Subhashini Bollini**Speakers: Randolph H. Freking, Darold Killmer & Cynthia Forman Wilkinson*

What should we look for in deciding whether to take a case all the way to trial? In addition to having a case that is a winner under the law and being well-prepared for trial, what are some key criteria that make a case a good one to invest in for the long haul? A panel of successful NELA trial lawyers will discuss what makes a case a winner and offer advice on what to look for from when we select a case to when we reject a defendant's last-minute settlement offer.

3:45–5:00 p.m.

CONCURRENT SESSIONS

Wage & Hour Law

Planning For A Wage & Hour Trial—Starting With Discovery

San Jose Ballroom, 2nd Level

Moderator: Cornelia Dai

Speakers: James M. Finberg, George A. Hanson & Jason C. Marsili

With class and collective action cases going to trial more frequently, veteran practitioners will provide insight on shaping discovery, crafting successful trial plans to support class certification and defeat decertification, and how to present a winning wage and hour claim in trial. Topics will include representative evidence, use of experts, damages models, and jury selection.

California Employment Law

Advanced PAGA Issues

Sacramento Ballroom, 2nd Level

Moderator: Cynthia L. Rice

Speakers: Thomas M. Diachenko & Michael D. Singer

Our presenters will address recent developments and advanced issues relating to the Private Attorney General Act (PAGA). More than just the basics, this panel will discuss: (1) discovery in PAGA actions (as addressed in *Williams v. Superior Court*); (2) briefing PAGA penalties and opposing reductions in penalties; (3) effectively opposing attempts to impose class certification-type requirements in PAGA actions (as addressed in *Ortiz v. CVS Caremark*); (4) trying PAGA claims; and (5) issues that arise when PAGA claims are brought in conjunction with other Labor Code violations (such as bifurcation and arbitrability).

What I Wish I Knew When I Was Starting Out As A Plaintiffs' Employment Lawyer

Santa Anita A & B, Lobby Level

Moderator/Speaker: Nina T. Pirrotti

Speakers: Elissa J. Hobfoll, Whitney Judkins & Brian T. Rochel

NELA members will cover a breadth of topical areas that they have learned and wish they would have known as new plaintiffs' employment lawyers. They will provide practice tips, strategies, and pointers on client intake and interactions, dealing with opposing counsel, taking and defending depositions, discovery, summary judgment, preparing for trial, and more. While this presentation is aimed at newer lawyers, it will assume the audience knows the basics of each substantive area and thus will focus on more advanced techniques and concepts that the panelists believe a newer lawyer can learn from and integrate into their practice in the near future.

Forensic Mental Health Experts: Understanding Yours & Undercutting Theirs

San Gabriel A & B, Lobby Level

Moderator: Kelly Brandon

Speakers: Paige Fiedler, Louise Fitzgerald, Ph.D. & Heather Newsom Leonard

Emotional distress evidence is an extremely important piece of the damages puzzle for employment plaintiffs. This presentation will provide litigators with insight into the minds of psychological experts; the testing provided to clients; and how to present evidence effectively and counter the defense at trial regarding complex medical evidence.

6:00–7:30 p.m.

Annual Reception

Plaza Deck, 4th Level

The Annual Reception is included in the registration fee for Convention registrants only. Guest tickets for the Annual Reception may be purchased at the Registration Booth or at the door.

FRIDAY, JUNE 24, 2016

7:00 a.m.

Tobias 5K Run

Westin Bonaventure Hotel & Suites Lobby

Participants are requested to meet in the lobby of the Westin Bonaventure Hotel & Suites at 6:45 a.m.

7:00–9:00 a.m.

2016 Annual Convention Registration

San Diego Registration Booth, 2nd Level

Continental Breakfast

California Foyer, 2nd Level

Continental breakfast is available to Convention registrants only.

9:00–10:15 a.m.

Using The Restatement Of Employment Law To Your Client's Advantage

San Francisco/Sacramento Ballroom, 2nd Level

Moderator/Speaker: Joseph D. Garrison

Speakers: Alice W. Ballard, Professor Samuel Estreicher, Professor Michael C. Harper & Cliff Palefsky

The first Restatement of Employment Law was published in mid-2015. Like other Restatements, it should have significant influence with the courts, both state and federal, when they apply common law principles. Our panel includes two of the four Reporters, the Chief Reporter Professor Samuel Estreicher, and the Reporter writing on the existence of the employment relationship as well as employment torts, Professor Michael Harper. We plan to highlight those sections of the Restatement that are most beneficial to NELA lawyers, as well as brainstorm how unsettled questions in the common law can be answered to your client's benefit.

10:15–10:30 a.m.

BREAK

California Foyer, 2nd Level

10:45 a.m.–12:00 p.m.

CONCURRENT SESSIONS

Discovery**Taking Rule 30(b)(6) Corporate Depositions: Strategies For Success****San Gabriel A & B, Lobby Level***Moderator/Speaker: Walt Auvil**Speakers: Cyrus Mehri & Robert L. Schug*

A popular topic on The NELA Exchange, the Rule 30(b)(6) corporate deposition can be a valuable tool for plaintiffs' employment lawyers. How you prepare for a corporate deposition will directly affect the success of your case. Do you know how to prepare effectively for a corporate deposition, and to maximize this useful discovery tool? Our speakers will review key aspects of Rule 30(b)(6) and what differentiates it from other forms of discovery, considerations when noticing the deposition, selecting the corporate representative for deposition, strategies for successfully taking the deposition, and anticipating defense counsel's tactics.

Nuts & Bolts**Advocating For The Rights Of LGBT Employees****Beaudry B, Lobby Level***Moderator/Speaker: Teresa S. Renaker**Speakers: Ria Tabacco Mar, Jacob Richards & Julie Wilensky*

With the U.S. Supreme Court's decisions on marriage equality in *United States v. Windsor* and *Obergefell v. Hodges*, it is easy to overlook the existence of widespread and continuing discrimination against LGBT workers. While recent developments in the EEOC and federal courts have clarified the scope of Title VII's protections for LGBT individuals, not all employers are subject to federal laws prohibiting discrimination. Join a panel of experienced practitioners to discuss the current state of LGBT rights in the workplace, including recent developments in Title VII law, pension and health benefits issues affecting employees with same-sex spouses, and issues relating to transgender health care exclusions.

Trial Advocacy**How To Win Harassment, Discrimination & Punitive Damage Claims Without An HR Expert****San Francisco Ballroom, 2nd Level***Moderator/Speaker: Nancy Bornn**Speakers: Scott R. Ames & Amy Oppenheimer*

Having an HR expert testify as to the standard of care is a well-established method for proving a claim that the employer failed to take reasonable steps to prevent, correct, and remedy harassment or discrimination—and showing the employer's lack of care may provide the basis for punitive damages. Not every case warrants the expense, however, and in others, a judge might erroneously exclude the expert. Our speakers will discuss how to win these claims without an HR expert. They will provide you with a detailed outline of each of the elements required to meet the existing standard of care relating to (1) creating, communicating, and implementing anti-harassment/discrimination policies; (2) training employees and supervisors; (3) developing and implementing effective complaint procedures; (4) conducting proper investigations; and (5) taking appropriate remedial actions. The outline can be used as a template for the deposition of the employer's HR personnel, as the basis for special jury instructions, and/or as a checklist for your HR expert. A mock cross-examination of the employer's HR personnel through the use of the outline will be presented.

Wage & Hour Law**Hot Topics In Wage & Hour Law****San Jose Ballroom, 2nd Level***Moderator/Speaker: Christine E. Webber**Speakers: David Borgen, Richard J. Burch & Catherine K. Ruckelshaus*

Hear from expert practitioners about the latest developments in wage and hour law including the proposed white collar regulations, the newly implemented home care regulations, the U.S. Supreme Court's recent ruling in *Tyson v. Bouaphakeo*, issues with settlements and the scope of releases in class and collective actions, the latest on what to include in calculating the regular rate, decisions on the defense bar's attempt to bar recovery in off-the-clock cases with a "see no overtime, hear no overtime, pay no overtime" position, and more.

California Employment Law**Winning Pre- And Post-Trial Motions****Sacramento Ballroom, 2nd Level***Moderator/Speaker: Jayme L. Walker**Speaker: Darci E. Burrell & Valerie T. McGinty*

Carefully developing and implementing a strategy regarding pre- and post-trial motions is essential to maximize both your chances of winning at trial and preserving every aspect of your victory when you prevail. Our presenters will discuss strategy and tactics regarding: (1) motions in *limine*; (2) opposing motions for new trial and JNOV; and (3) motions for attorney fees. In doing so, they will describe the specific substantive and timing requirements for each type of motion, suggest best practices, and provide a compendium of examples.

Recent Developments In Representing Federal Employees:*Santa Anita A & B, Lobby Level***EEOC's Management Directive 110***Moderator/Speaker: Joseph V. Kaplan**Speakers: Cathy A. Harris & Victor Voloshin*

In August 2015, the Equal Employment Opportunity Commission (EEOC) issued its new Management Directive 110, which complements the EEOC's federal sector regulations (29 CFR part 1614), by spelling out in great detail each party's obligations in the EEO process, requirements of the investigation, investigators' authority, judges' authority, the role of the agency representative, and so forth. The MD-110 is mandatory guidance, the violations of which can lead to sanctions. Some new changes clarify that the Responsible Management Official cannot be the agency's Settlement Official, and contain controversial provisions regarding the role of agency counsel in the investigation process (Chp. 1, IVD. Separation of EEO Complaint Program from Agency's Defensive Function). This session is a must for federal employee rights practitioners!

Box Lunch*California Foyer & San Diego Ballroom, 2nd Level*

Box lunch is available to Convention registrants only. Box lunch seating is available in the San Diego Ballroom.

NELA Members Forum: What's New At NELA*Sacramento Ballroom, 2nd Level*

Join NELA President Alicia K. Haynes, the NELA Executive Board, and NELA Staff to learn about the exciting new initiatives and programs of the largest plaintiffs' employment law firm on the planet! We will talk about how you can get involved with NELA's Diversity, Equity & Inclusion Initiative, *Amicus* Program, Judicial Nominations Program, continuing legal education seminars and webinars, and in advancing our legislative and public policy priorities. You will also learn about the newest features of The NELA Exchange to maximize the power of one of NELA's most popular member benefits.

Feedback Wanted: EEOC's Online System For Intake & Charges*Beaudry B, Lobby Level**Speakers: Martin Ebel, Director Field Management Programs, EEOC & Cathy Ventrell-Monsees, Senior Counsel to the Chair, EEOC*

The EEOC is developing online systems to improve its service to individuals with complaints of discrimination in the private sector. The EEOC invites NELA members to provide feedback on an online self-assessment to help individuals understand if they have a charge of discrimination and schedule an intake appointment with the agency. The EEOC is also developing a system to digitally communicate with charging parties who have filed charges and welcomes NELA members' input to the design and features of this system.

NELA Committee & Practice Group Meetings

Convention participants are welcome to attend the committee and practice group meetings of their choice. Please check the bulletin board at the Registration Booth for other meetings.

Age Discrimination Law Practice Group

Daniel B. Kohrman & Laurie A. McCann, Chairs

*Meeting Room: San Pedro, Lobby Level***Class & Collective Actions Practice Group**

Christine E. Webber, Chair

*Meeting Room: Los Cerritos, Lobby Level***Disability Rights Practice Group**

Brian East, Chair

*Meeting Room: Beaudry A, Lobby Level***Employee Benefits Practice Group**

Margo Hasselman Greenbough, Chair

*Meeting Room: San Fernando, Lobby Level***Ethics & Sanctions Committee**

David L. Kern & Richard R. Renner, Chairs

*Meeting Room: San Bernardino, Lobby Level***Federal Employee Rights Practice Group**

Elbridge W. Smith, Chair

*Meeting Room: La Cienega, Lobby Level***Labor Law Practice Group**

Joshua Parkhurst, Chair

*Meeting Room: La Brea, Lobby Level***Low Wage Workers Practice Group**

Victoria W. Ni, Chair

*Meeting Room: Santa Anita C, Lobby Level***Religious Discrimination Law Practice Group**

Todd R. McFarland, Chair

*Meeting Room: Santa Barbara A, Lobby Level***Sexual Harassment Law Practice Group**

Cedar P. Carlton & Scott M. Pollins, Chairs

*Meeting Room: Los Feliz, Lobby Level***Sexual Orientation & Gender Identity Law Practice Group**

Rob Wiley, Chair

*Meeting Room: Santa Barbara B, Lobby Level***Trial Practice & Litigation Practice Group**

Dennis E. Egan, Chair

*Meeting Room: Palos Verdes, Lobby Level***Wage & Hour Law Practice Group**

David Borgen, Past Co-Chair & Justin M. Swartz, Co-Chair

Meeting Room: San Gabriel C, Lobby Level

2:00–3:15 p.m.

CONCURRENT SESSIONS

Discovery**ESI On The Offense: Holding Defendants' Feet To The Fire***Santa Anita A & B, Lobby Level**Moderator: Sonal Bhatia**Speakers: Jeff Kerr & Trang Q. Tran*

This session provides a big picture view of the new world of employment law in an age of smart phones, social media, email communications, cyber hacks, and more. Our speakers will explore the many ways that employment law is affected by technology and provide specific tips for handling technology-based issues. They also will discuss the leading case law in this area, where we should and should not fight discovery requests, and then delve into real world logistics. You will learn about the best practices for downloading, reviewing, and producing social media and other electronic communications, determining whether it can be done in-house, by the client, or requires outside help, and the costs associated with the same.

Nuts & Bolts**There's No Smoking Gun: Proving Discrimination & Retaliation By Pretext***San Gabriel A & B, Lobby Level**Moderator/Speaker: Patricia A. Barasch**Speakers: Susan M. Coler & Professor Michael L. Foreman*

In the absence of direct or obvious evidence, many types of employer conduct can establish an intent to discriminate or retaliate. Learn how plaintiffs can win these cases through pretextual evidence alone and how to challenge employers' defenses. Our speakers will provide a review of how courts analyze the various kinds of pretext and where the case law is headed on this critical battleground topic.

Trial Advocacy**Jury Selection For Employment Cases***Sacramento Ballroom, 2nd Level**Moderator/Speaker: Andrew Dwyer**Speakers: Sonia Chopra & Harry Plotkin*

This presentation is aimed at an intermediate to advanced audience. A veteran NELA trial lawyer will be joined by two nationally renowned jury consultants to discuss juror research; preparation for jury selection; drafting effective *voir dire*; laying the foundation for "for cause" challenges; responding to "for cause" challenges and allegations of juror bias; use of peremptory challenges; *Batson* challenges; and identifying "good" and "bad" jurors for employment cases.

Wage & Hour Law**Co-Counseling & Cooperating With Other Plaintiffs' Lawyers
(Or Playing Nice In The Sandbox)***Beaudry B, Lobby Level**Moderator: Justin M. Swartz**Speakers: J. Derek Braziel, Gilda "Jill" Hernandez & Douglas M. Werman*

Working with other plaintiffs' lawyers can be rewarding, profitable, and challenging—all at the same time. The speakers on this panel have worked with each other and with other plaintiffs' lawyers and have lived to talk about it. They will address tactical and logistical issues that arise when plaintiffs' counsel work together as co-counsel or work alongside each other in parallel litigation. The panel will explore some of the thornier issues that arise in co-counsel relationships, including drafting co-counsel agreements, determining who is in charge, assigning work, sharing information, paying costs, dealing with media, handling future cases, and (of course) dividing fees, among others. In addition, the panel will discuss issues that arise when plaintiffs' counsel prosecute claims in related cases in the same or different courts, including coordination and transfer (in MDLs or otherwise), discovery coordination, and mediation. Audience participation is encouraged.

**California
Employment Law****Delivering Dynamic Opening & Closing Statements***San Jose Ballroom, 2nd Level**Moderator: J. Bernard Alexander, III**Speakers: Kathleen L. Bogas, Lawrence A. Bohm, Alicia K. Haynes & Arash Homampour*

A diverse mix of highly-experienced practitioners will discuss ways to craft and deliver energetic and persuasive opening and closing statements. Each of our seasoned advocates will present on a different underlying subject matter, and will share their tips and tactics for engaging your next jury effectively.

Mediating Your Way To Success*San Francisco Ballroom, 2nd Level**Mediators: Lynne S. Bassis & Mark S. Rudy**Plaintiff: Karen E. Pointer Plaintiff's Counsel: Toni J. Jaramilla**Defendant: Tony R. Skogen Defense Counsel: Lester L. Jones*

Learn effective strategies and gain insights for mediation—and get a behind-the-scenes look at what plaintiff and defense lawyers are discussing—through a simulated mediation presented by veteran mediators and practitioners.

3:15–3:30 p.m.

BREAK

California Foyer, 2nd Level

3:45–5:00 p.m.

CONCURRENT SESSIONS

Discovery

The Key Discovery Battles In Employment Law Litigation

San Francisco Ballroom, 2nd Level

Moderator/Speaker: James H. Kaster

Speakers: Katherine L. Butler & Michael R. Fox

From timeliness of response to social media issues to “past bad acts” to preservation of electronic information, this session focuses on the biggest issues plaintiff and defense lawyers debate in nearly every litigation battle. Our panel will discuss the best arguments on both sides of these discovery fights as well as the actual outcomes in cases they have handled.

Nuts & Bolts

Accommodating Religious Beliefs & Practices In The Workplace

Santa Anita A & B, Lobby Level

Moderator: Charles E. Guerrier

Speakers: Amy L. Coopman, Jennifer S. Goldstein & Todd R. McFarland

This presentation offers practical guidance on religious accommodation questions employees often face: whether an employer may consider customer preferences, what triggers the obligation to reasonably accommodate, what questions an employer may and may not ask, whether a seniority system overrides a religious accommodation request, and when an accommodation may pose an undue hardship on the employer’s operations. Included within the discussion is an overview of the EEOC’s new technical assistance on Religious Garb and Grooming in the Workplace along with recent decisions on this topic.

Wage & Hour Law

FLSA Basics: Exemptions Galore & Much, Much More!

San Jose Ballroom, 2nd Level

Moderator: Rachhana T. Srey

Speakers: Todd F. Jackson, Troy L. Kessler & Jahan C. Sagafi

Just dipping your big toe in the FLSA pool? Want to get your whole foot, maybe even your whole body, in the water, but may need to learn a bit more? This panel of dedicated FLSA practitioners will cover the basics in terms of substantive FLSA issues, including lesser known exemptions, what constitutes compensable hours worked under the FLSA, and a variety of regulated rate and damages issues. They will also provide practical tips for how to conduct a proper intake for an FLSA case.

**California
Employment Law**

Age Discrimination In Focus

Sacramento Ballroom, 2nd Level

Speakers: J. Gary Gwilliam & Daniel B. Kohrman

As more Americans will be working longer into their older years, the need for robust enforcement of both state and federal age discrimination laws is more important than ever. A number of positive results in cases arising under both California and federal law provide encouragement that the courts can provide an effective means of recourse when workers are targeted, individually or collectively, because of their age. Our presenters will share their experiences successfully litigating individual and class age claims under the Fair Employment and Housing Act in *Anderton v. Bass Underwriters* and *Andrews v. Lawrence Livermore National Laboratory*, as well as favorable rulings on behalf of older workers in collective actions arising under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act in *McLeod v. General Mills* and *Villareal v. R.J. Reynolds*. Our panelists will discuss what can be learned to help practitioners better advocate on behalf of an aging workforce.

Deferred Compensation Issues In Negotiating Severance Agreements

San Gabriel A & B, Lobby Level

Moderator/Speaker: Wayne N. Outten

Speakers: Margo Hasselman Greenhough, Susan P. Serota & David J. Weiner

Deferred compensation (e.g., restricted stock, stock options, and other equity-based interests) present special issues when negotiating severance agreements. Our panelists will discuss techniques for protecting and maximizing the value of such interests, such as achieving accelerated or continued vesting and/or value in lieu of such interests. Hear from experts on negotiation strategies, valuation of such interests, and tax traps in separation agreements (IRC Section 409A and more). Special attention will be given to these issues as they relate to start-up companies.

FRIDAY, JUNE 24, 2016

3:45–5:00 p.m.

CONCURRENT SESSIONS

Successfully Representing Undocumented Workers In Employment Litigation

Beaudry B, Lobby Level

Moderator/Speaker: M. Nieves Bolanos

Speakers: Justin D. Cummins & Christopher Ho

This presentation will explore the effects of immigration status on employment litigation and offer practical techniques to represent undocumented workers successfully. Topics include methods for assessing the immigration-related risks of litigation and counseling undocumented plaintiffs about those risks without exaggerating them; strategies for keeping immigration status out of the litigation; managing litigation, discovery, and proof issues; winning protective orders barring discovery of immigration status and educating judges on how to handle this issue properly; retaliation against plaintiffs still employed by the defendant; using the USDOL-ICE Memorandum of Understanding to your client's advantage; and concerns that arise in structuring settlements for undocumented workers and paying out litigation proceeds.

7:30–11:00 p.m.

NELA's Annual Gala Fundraiser | **Lights, Camera, Action!**

San Diego Ballroom, 2nd Level

With hundreds of plaintiffs' employment lawyers from across the country gathering in Los Angeles for #NELA16, NELA will devote this year's Annual Gala Fundraiser to a festive celebration of the remarkable talents, steadfast commitment, and undeniable passion of the members of our NELA family. **Lights, Camera, Action!** will feature "The #NELA16 Talent Show," along with karaoke, music, dancing, and dessert. Proceeds from **Lights, Camera, Action!** will advance equality and justice in the American workplace by fueling NELA's *Amicus*, Judicial Nominations, and Legislative & Public Policy Programs, including the initiatives of our Washington DC Office. Tickets for the Gala Fundraiser may be purchased at the Registration Desk or at the door.

SATURDAY, JUNE 25, 2016

7:30–9:00 a.m.

2016 Annual Convention Registration

San Diego Registration Booth, 2nd Level

Continental Breakfast

California Foyer, 2nd Level

Continental breakfast is available to Convention registrants only.

9:00–10:15 a.m.

CONCURRENT SESSIONS

Discovery

Best Practices For Taking & Defending Depositions

San Francisco Ballroom, 2nd Level

Moderator/Speaker: David L. Lee

Speakers: Kathleen M. Cahill & Renuka V. Jain

Depositions set the stage for success or failure at trial. Geared for new attorneys, veteran NELA practitioners will share best practices and techniques to gather information, secure admissions, refresh memory, impeach witnesses, and confirm theories that set the foundation for successful motions, persuasive settlement tactics, and more effective and efficient trial presentations. They also will discuss how to prepare your client for deposition, deal with objections, and cope with obstreperous counsel, and teach you when and how to make proper objections and instruct your client/witness not to answer.

Nuts & Bolts

Winning Strategies When Your Client Is Forced To Arbitrate

San Gabriel A & B, Lobby Level

Moderator/Speaker: Kathryn Burkett Dickson

Speakers: The Honorable Elaine Gordon, Shannon Liss-Riordan & Paul J. Lukas

The U.S. Supreme Court has spoken and more and more employees are being forced to arbitrate workplace disputes. Our panel of experts will discuss recent case law and NLRB developments that may affect whether and how your clients' claims are arbitrated; when and if you should fight arbitration; and how to maximize the aspects of arbitration that can benefit your clients. They will address issues that arise when your client is sent to arbitration, such as what you can accomplish in court before arbitration, how to select an arbitrator, navigating the arbitration process, and the differences between litigating in an arbitral forum and in court.

Trial Advocacy

If You Want To Defeat Summary Judgment Or Win At Trial, Think Like A Journalist

San Jose Ballroom, 2nd Level

Speakers: Dennis E. Egan & Chip Muller

This session will examine how the best employee rights advocates often use journalists' best practices to advance their clients' interests and win in court. Dennis Egan, a former newspaper reporter, and Chip Muller, a former television reporter, will share how reporters' professional habits can be deadly weapons in the employment lawyer's toolbox. You will learn how to write clearly and simply for maximum impact; start with your "best stuff first" to grab the attention of judge or jury; use pictures, graphs, and sound to tell your client's story; apply storytelling devices such as repetition, foreshadowing, and humanizing to make judges and juries care about your client; and how to dive deep into facts and documents, and interview witnesses to create a robust factual record and understanding of your case.

Wage & Hour Law

Who Is An Employer & Who Is An Employee?

Santa Anita A & B, Lobby Level

Moderator: Rachel M. Bien

Speakers: James Kan, Peter Sung Ohr & Douglas M. Werman

The fissured workplace is making it increasingly difficult to identify who is the employee and who is the employer in wage and hour litigation and other employment litigation. This presentation will address the state of the law under the FLSA, state wage and hour laws, and the NLRA, which contains a recently clarified definition of "joint employer" that is very favorable to our clients. It will focus on discovery and litigation strategies for pursuing claims based on a variety of different business models that include subcontractors, independent contractors, interns, volunteers, labor brokers, temporary staffing, franchises, and third-party managers. Our panelists will also discuss how joint employment can help to find insurance coverage, to avoid uncollectible judgments, and to improve settlement opportunities.

California Employment Law

Overcoming The Harris Defense

Sacramento Ballroom, 2nd Level

Moderator/Speaker: Barbara E. Figari

Speakers: Craig T. Byrnes & Kelly A. Knight

It has been over three years since the California Supreme Court adopted a burden-shifting framework for Fair Employment and Housing Act claims in *Harris v. City of Santa Monica*, which included the damages-eliminating "same decision" defense. Our panelists will review how the *Harris* framework has informed their litigation strategies and altered their tactics at different stages in a case, and share best practices for representing workers under the new standard. They will also analyze the strengths and weaknesses of the existing California Civil Instructions regarding the "same decision" defense, and suggest ways for crafting and presenting instructions in ways that will maximize your ability to recover all of the damages to which your client is entitled.

Ethical Pitfalls For Plaintiffs' Employment Lawyers

Santa Anita C, Lobby Level

Moderator/Speaker: David L. Kern

Speakers: Carla D. Brown & Gary Savine

It is important to understand that even the most talented and diligent attorneys make mistakes. As such, it is imperative to learn the common hazards that exist in day-to-day practice. NELA's ethics experts will teach you about the common traps and equip you with skills and strategies on how to avoid them. They will examine specific high-risk areas related to substantive competence, handling of client property, and the wellness-discipline connection. In addition, they will address what to do when named in a disciplinary complaint; how adopting the elements of professionalism helps ward off disciplinary exposure; issues that arise in multiple client representation; and the need to show restraint and act professionally on social media.

10:15–10:30 a.m.

BREAK

California Foyer, 2nd Level

10:45 a.m.–12:15 p.m.

The Year In Review: Significant Developments In Employment Law

San Francisco/Sacramento Ballroom, 2nd Level

Moderator: Matthew C. Koski

Speakers: Professor Eric Schnapper & Richard T. Seymour

The 2016 Annual Convention will close with Professor Schnapper and Mr. Seymour discussing the employment cases decided by the U.S. Supreme Court during its 2015–2016 term, significant legislative and state law developments, as well as emerging issues in plaintiffs' employment law.

12:15 p.m.

Convention Adjourns

Join us in San Antonio, TX for NELA's 2017 Annual Convention.

June 21–24, 2017
Marriott San Antonio Rivercenter