



ACI
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Pre-Conference Workshop A
January 29, 2018

Minding the Gap – Working Group
on Reducing the Risk of Pay
Discrimination Claims

Post-Conference Workshop B
January 31, 2018

EPL Negotiation Master Class:
A Tactical Tool-Kit for Negotiation,
Mediation and Arbitration of EPL Claims

January 29–31, 2018 | Andaz Wall Street | New York, NY

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26th National Conference on EMPLOYMENT PRACTICES LIABILITY INSURANCE

Leading Insurers, In-House EPL Professionals, Employment Counsel and Government Agency Representatives will Provide Expert Insights on:

- EPL Claims Trends, New Exposures and Underwriting Considerations
- Coverage Gaps and Cost Control Strategies
- State and Local Regulations Currently Driving EPLI Claims
- The Evolving Role of Wage & Hour Insurance in EPL Coverage
- The Impact and Interplay of ADA, PDA, FMLA and State Worker's Compensation Laws on EPL Coverages
- The Uptick in Sexual Harassment Claims
- Litigation and Coverage Strategies for Privacy Lawsuits in the E-Workplace
- LGBT Discrimination Claims in the Workplace
- The Complexities, Challenges and Coverage of Retaliation Claims
- Race, Religion and National Origin Discrimination Claims Prevention
- Successful EPL Litigation Strategies from Summons to Summation
- Ethics Challenges Relative to Counsel, Insurer and Policyholder

Featured Speakers:



Victoria A. Lipnic
Acting Chair
U.S. EEOC



Philip A. Miscimarra
Chairman
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Marvin E. Kaplan
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Business Information in a Global Context

Dear Colleague:

As we approach 2018, Employment Practices Liability claims continue their upward trajectory, racking up astronomical defense costs for employers and their insurance companies. In today's workplace, employers are facing new takes on traditional exposures, such as wage and hour, joint employer liability, medical leave, maternity and other disability claims, in addition to new claim trends concerning gender and sexual orientation, religion and national origin. If this were not enough, employers are also facing new challenges based on novel theories of liability built around whistleblower retaliation, privacy, data protection, and social media.

Given this very wide span of potential EPL exposures, and the fact that current employees, former employees and even rejected job applicants may file EPL actions – employers, their insurance companies and counsel face a distinct uphill battle. For these reasons, proper insurance coverage, risk management protocols, employee training and effective litigation strategies are critical to mitigate the EPL exposures facing businesses today.

Claims professionals, underwriters, risk managers, in-house counsel and outside counsel must thoroughly understand the ever changing EPLI market with new coverage options, ways to reduce the costs of defending against and settling EPLI claims, and how to minimize exposure to risk.

ACI's 26th National Conference on EPLI will address all the challenges in the new employment practices liability arena. Our conference faculty, comprised of the "who's who" of EPLI thought leadership, will help ensure that you are prepared to prevent, manage and defend against the increasing number of employment practices liability claims being filed today.

Attend this event and obtain the highest-level insights on:

- The Latest EPL Claims Trends, Policies, and Underwriting Considerations
- State and Local Regulations Currently Driving EPLI Claims
- The Evolving Role of Wage & Hour Insurance in EPL Coverage
- The Interplay of ADA, PDA, FMLA and Worker's Compensation Laws in the EPL arena
- The Correlation between the 2016 Presidential Election and Recent Rise in Sexual Harassment Claims Coverage
- E- Workplace Privacy Lawsuits
- LGBT Discrimination Claims
- Retaliation Claims and Coverages
- Ethical Dilemmas Associated with the Relationship Between Counsel, Insurer and Policyholder

This event will also help you formulate litigation strategies for the most complex of EPL challenges – from summons to summation.

Also, add value to your attendance, by registering for one of our in-depth workshops:

Pre-Conference Workshop A:

Minding the Gap – Working Group on Reducing the Risk of Pay Discrimination Claims

Post-Conference Workshop B:

EPL Negotiation Master Class: A Tactical Tool-Kit for Negotiation, Mediation and Arbitration of EPL Claims

Register now by calling **1-888-224-2480** or by faxing your registration form to **1-877-927-1563**. You can also register online at www.AmericanConference.com/EPLI

Sincerely,



Nicole Pitti

Nicole L. Pitti, Esq.
Senior Legal Analyst & Program Director
American Conference Institute
N.Pitti@americanconference.com



Who YOU WILL MEET:

In-House EPL Professionals, including:

Underwriters
Claims Counsel
Employment Counsel
Brokers
Product Managers
Risk Managers
Human Resources Managers

Private Practice Attorneys Specializing in:

Labor and Employment
Insurance
Employment Discrimination
Class Actions



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(New York, NY)

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Partner

Littler Mendelson, P.C. (Las Vegas, NV)

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EEOC (Washington, DC)

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NLRB (Washington, DC)

Philip A. Miscimarra

Chairman

NLRB (Washington, DC)

SPEAKERS

Aneesa Abrams

Partner

FordHarrison LLP (Washington, DC)

Jessica Fritz Aguiar

Senior Claims Analyst

North American Claims Group

Allied World Insurance Company
(Farmington, CT)

Julie O'Donnell Allen

Counsel

Sidley Austin LLP (Chicago, IL)

Kristina Barcia

Assistant Vice President – Claims

AXIS Insurance (Fairfield, NJ)

Justin J. Blacklock

Executive Underwriter, EPLI Specialist

North America Financial Lines

Chubb (Chicago, IL)

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Partner

Greenberg Traurig, P.A. (Miami, FL)

Kristi Mackin Galletti

Sr. Claims Specialist

XL Professional Insurance
(Hartford, CT)

Ron Goldstein, Esq.

Managing Director

Aon Risk Solutions (New York, NY)

Lori Armstrong Halber

Partner

Fisher & Phillips LLP (Radnor, PA)

Laura B. Juffa

Partner

Kaufman Borgeest & Ryan LLP
(New York, NY)

Mark C. Knoth

Partner

Kerr, Russell and Weber, PLC
(Detroit, MI)

Jamie M. Kohen

Assistant General Counsel

JPMorgan Chase

Carrie Kurzon

National EPLI Product Manager

The Hartford (New York, NY)

Laura Lapidus

Management Liability (EPL)

Risk Control Director

CNA (New York, NY)

Chris Lavelle

Second Vice President/EPL Product Leader,

Underwriter, Professional Lines

USLI (Philadelphia, PA)

Jenna Leyton-Jones

Partner

Pettit Kohn Ingrassia Lutz & Dolin PC
(San Diego, CA)

Joni Mason

Vice President and National Practice Advisor

Wells Fargo Insurance Services
(New York, NY)

Brandi Monique

Assistant Vice President, Employment

Practices Liability (EPL) Department

AIG (New York, NY)

Talene Megerian

EPL Thought & Product Leader / Claims

Advocate, FINEX

Willis Towers Watson (New York, NY)

Machua Millett

Chief Innovation Officer, FINPRO US

Marsh (Boston, MA)

Paul Nash

Underwriter – Management Liability

Specialty Lines

Beazley Group (London)

Rondiene E. Novitz

Partner

**Cruser, Mitchell, Novitz, Sanchez,
Gaston & Zimet, LLP** (New York, NY)

Jennifer O'Connor

Partner

Saiber LLC (Florham Park, NJ)

Rhonda Prussack

Head of Fiduciary and

Employment Practices Liability

**Berkshire Hathaway Specialty
Insurance** (New York, NY)

Julianna Ryan

Partner

Kaufman Borgeest & Ryan LLP
(New York, NY)

David A. Schooler

Partner

Briggs and Morgan, P.A. (Minneapolis, MN)

Kelly B. Thoeig

Employment Practices Liability (EPL)

Coverage Leader

Marsh (Richmond, VA)

David T. Vanalek, Esq.

Director, US Professional Liability

Markel – Claims (Chicago, IL)

Clinton J. Wesolik

EPL National Product Leader

CNA (Chicago, IL)

Christopher Williams

EPL Product Manager

Travelers Insurance (Hartford, CT)

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Pre-Conference Workshop A

Monday, January 29, 2018

2:00 – 4:00 (Registration opens at 1:00)

“Minding the Gap” – Working Group on Reducing the Risk of Pay Discrimination Claims: Pro-Active Measures and Best Practices

Pay discrimination claims are among the latest cause of EPL angst among employers. Be part of this interactive working group and engage in a comprehensive survey and detailed analysis of emerging state pay equity laws, with a focus on different state nuances and pitfalls to avoid. This working group will provide you with the tools that you need to develop essential strategies for counseling clients on proactive measures and best practices to prevent and defend against pay discrimination claims, including:

- Devising best practices for evaluating and drafting defensible compensation policies and procedures
- Performing statistical analyses by partnering with experienced labor economists and statisticians
- Advising on employment policies and practices that may impact pay (e.g. hiring practices, job descriptions, performance reviews, etc.)
- Conducting and managing pay equity preemptive audits, particularly when operating under varying state regulations



Main Conference Day One

Tuesday, January 30, 2018

7:30

Registration and
Continental Breakfast

8:10

Co-Chairs' Welcome



Mercedes Colwin
Gordon Rees Scully Mansukhani,
LLP



Patrick H. Hicks
Littler Mendelson, P.C.

8:15

Fireside Chat with Acting Chair Victoria Lipic: EEOC Initiatives Under the New Administration for 2018



Victoria A. Lipic
Acting Chair
U.S. EEOC

Employers, human resource professionals, employment attorneys and EPL insurance specialists have all had the same burning question on their minds since January 2017 – what is the Trump Administration's Equal Employment Opportunity Commission agenda going to look like? Acting EEOC Chair Victoria Lipic will share her candid views on the EEOC's current priorities under the new administration, as well as her thoughts on the future compliance initiatives she believes employers should be aware of in 2018.

8:45

NLRB Update: Addressing the Latest Agency Activity and Initiatives Affecting Employers with EPL Coverage



Philip Miscimarra
Chairman
NLRB



Marvin E. Kaplan
Board Member
NLRB

- Exploring how the current NLRB board is reconsidering significant workplace practices
- Addressing current and upcoming agency initiatives, including:
 - NLRB's test for determining whether a joint employer relationship exists
 - Standards for evaluating whether workplace rules interfere with employees' rights under the NLRA
 - Appropriate units for collective bargaining
 - Social media policies in the workplace

9:20

Insurance Carrier and Broker Insights on the Latest EPL Claims Trends - Both Here and Abroad: Understanding How Today's Workplace Risks are Affecting Distinctions in Policies

Justin J. Blacklock
Executive Underwriter, EPLI Specialist
North America Financial Lines
Chubb

Talene Megerian
EPL Thought and Product Leader / Claims
Advocate, FINEX
Willis Towers Watson

Clinton J. Wesolik
EPL National Product Leader
CNA

Kelly B. Thoerig
Employment Practices Liability (EPL)
Coverage Leader
Marsh

MODERATOR:

Mercedes Colwin
Gordon Rees Scully Mansukhani, LLP

Join us for this interactive roundtable of representatives and brokers from top insurance carriers who will provide insights on how the latest workplace risks and exposures are playing out in the employment practices liability insurance market.

Topics to be covered will include:

- Insurer insights on the latest EPL claims trends
 - What are the new and hot workplace torts and how are they affecting distinctions in policy language?
 - What are the most difficult cases to resolve?
- Assessing foreign EPL claims: insuring U.S. companies operating internationally
- Developing strategies for minimizing claims
- How are the initiatives of the new administration affecting the EPLI market?

10:20

Morning Coffee Break

10:30

Preparing for What's Happening In Your Own Backyard: Examining the Latest State and Local Regulations Currently Driving EPLI Claims

Christopher Williams
EPL Product Manager
Travelers Insurance

Aneesa Abrams
FordHarrison LLP

Jenna Leyton-Jones
Pettit Kohn Ingrassia Lutz & Dolin PC

As state employment laws are becoming more of a growing concern, and local laws are filling in the gaps caused by some federal regulatory backsliding under the new administration, employers and their counsel must be more aware of what is going on in their own proverbial backyard than ever before. This panel will examine the latest and most significant state and local regulatory initiatives that are driving EPL claims, and how all these varying efforts are colliding to create a more precarious claims and coverage environment.

Points of discussion will include:

- Survey of state and local laws affecting
 - Pay equity and pay transparency
 - Paid sick leave and family leave
- State wage and hour law nuances
- State discrimination law distinctions
- Interstate conflicts when operating across state lines
- State and local regulations affecting insurers' evaluation and underwriting of EPL risk and price products



11:20

The ABC's of Litigating an EPL Claim: Developing Key Strategies for Successful Litigation from Summons to Summation to Settlement and Adjudication

Patrick Hicks
Littler Mendelson, P.C.

Joseph Z. Fleming
Greenberg Traurig, P.A.

Hillary J. Raimondi
Traub Lieberman Straus & Shrewsberry LLP

- Exploring common challenges raised in employment claims depositions
- Addressing top discovery challenges and developing strategies for overcoming them
- Assessing judicial responses to different arguments in recent EPL cases
- Developing successful tactics for voir dire and use of expert witnesses
- Identifying privilege concerns that arise in internal investigations and their impact on subsequent litigation

12:20

Networking Lunch for Speakers and Delegates

1:20

Revisiting the Evolving Role of Wage & Hour Insurance in EPL Coverage: New Exposures, Claims Trends and Coverage Challenges

Machua Millett
Chief Innovation Officer, FINPRO US Marsh

Paul Nash
Underwriter – Management Liability Specialty Lines
Beazley Group

Julianna Ryan
Kaufman Borgeest & Ryan LLP

Mark C. Knoth
Kerr, Russell and Weber, PLC

- Addressing the expanding insurance marketplace for wage & hour claims coverage
- Understanding what underwriters are looking for in evaluating wage & hour risk
 - Methods used and challenges faced in underwriting this risk
- Understanding the role of wage & hour insurance in the defense and settlement of claims
- Assessing how wage & hour policies are evolving
- Addressing common challenges that may arise when wage & hour insurance is in place
- Identifying the type of companies that need wage & hour insurance most

2:15

Analyzing The Uptick in Sexual Harassment Claims: Causes, Trends, and Investigations

Jessica Fritz Aguiar
Senior Claims Analyst, North American Claims Group
Allied World Insurance Company

Joe Yastrow
Laner Muchin, Ltd.

Julie O'Donnell Allen
Sidley Austin LLP

- Exploring drivers in the recent uptick of sexual harassment claims
- Identifying best practices to mitigate risk of sexual harassment claims in the workplace
- Examining the EEOC's latest "Proposed Enforcement Guidance on Unlawful Harassment"
 - What practices are now recommended to effectively prevent and address harassment?
 - What is now "the standard" in terms of harassment training and corporate governance initiatives?
- Developing strategies for successfully handling sexual harassment claims
 - Effective early resolution tactics
- Understanding how to win the day in harassment suits based on a single incident rather than "pattern and practice"
- Establishing best practices for employers in investigating harassment claims internally
 - Navigating the attorney/client privilege implications

3:05

Afternoon Refreshment Break

3:20

The Interplay of ADA, PDA, FMLA and Worker's Compensation Laws on EPL Coverages Relative to Disability and Pregnancy Discrimination Claims

Brandi Monique
Assistant Vice President, Employment Practices Liability (EPL) Department
AIG

Lori Armstrong Halber
Fisher & Phillips LLP

Charles H. Wilson
Cozen O'Connor

- Survey of the latest pregnancy and disability claims trends associated with the ADA, PDA, FMLA and Workers' Compensation laws Addressing the recent surge of website accessibility claims under the ADA
 - What factors should businesses weigh in determining whether to fight or settle these suits?

- Examining the rise in "non-traditional"/ mental disability claims, and the unique hurdles in identifying and accommodating mental disabilities
- Assessing "hot button" accommodation challenges in ADA claims, and recent guidance on what satisfies the "interactive and deliberate" process in determining accommodations
- Examining recent pregnancy discrimination claims and their impact on EPL coverage
 - Claims of pregnancy complications qualifying as a disability
 - Wage claims surrounding lactation breaks for breastfeeding mothers
 - Claims involving pregnant women in "dangerous jobs" being forced to restructure job duties
- Preventing missteps in employee leave under the ADA, FMLA and Workers Compensation laws
 - Developing strategies for overcoming challenges and avoiding pitfalls

4:10

Avoiding Claims of Race, Religion or National Origin Discrimination in the Current Political Climate

Rhonda Prussack
Head of Fiduciary and Employment Practices Liability
Berkshire Hathaway Specialty Insurance

Storrs W. Downey
Bryce Downey & Lenkov LLC

- Examining the latest discrimination claims being brought on the basis of race, religion or national origin
- What accommodations are employers expected to make when an employee's religion affects or interferes with their employment?
 - Analyzing recent court determinations
- Establishing that a religious accommodation would cause undue hardship to the employer/business
- Identifying the steps that employers should take to avoid liability for discrimination claims of race, religion or national origin discrimination
 - Understanding what language should be included in your anti-harassment policies, as well as in your electronic communications and social media policies
 - Developing and implementing an effective problem solving procedure that allows an employee to make a complaint or request an accommodation
 - Instituting employee and manager training, and policy enforcement strategies

5:00

Conference Adjourns to Day Two

Cocktail Reception Sponsored by:



Main Conference Day Two Wednesday, January 31, 2018

7:30

Continental Breakfast

8:00

The Current Pulse of the EPLI Marketplace: Examining the Latest Underwriting Considerations, Identifying and Eliminating Coverage Gaps, and Developing Cost Control Strategies for 2018 and Beyond

Carrie Kurzon

National EPLI Product Manager
The Hartford

Chris Lavelle

Second Vice President/EPL Product Leader,
Underwriter, Professional Lines
USLI

Brad Craner, MBA

Vice President
Zurich Specialty Wholesale

Joni Mason

Vice President and National Practice Advisor
Wells Fargo Insurance Services

Ron Goldstein, Esq.

Managing Director
Aon Risk Solutions

MODERATOR:

Mercedes Colwin

Gordon Rees Scully Mansukhani, LLP

This panel of representatives from leading insurance carriers and brokers will take a deep dive into today's EPLI landscape, providing key insights on pertinent topics, including:

- Emerging opportunities and cutting edge/specialized products in the EPLI market
- Gaps and notable exclusions in coverage on the market
- Underwriting considerations and challenges in today's marketplace
- The market response to new and non-traditional workplace risks
- EPLI product requirements for sophisticated buyers
- Tactics for controlling the costs of EPLI

9:05

Privacy in the E-Workplace: Avoiding Litigation and Ensuring Proper Coverage for the Most Common Workplace Privacy Lawsuit Scenarios

David T. Vanalek, Esq.

Director, US Professional Liability
Markel – Claims

Kenneth P. Carlson, Jr.

Constangy, Brooks, Smith & Prophete LLP

In today's "e-workplace," situations that can lead to employment-related breach of privacy suits are abundant and varied. What is even more worrisome is that far too many businesses fail to cover the full span of these risks with the EPL insurance they procure. Today's employers face expanding challenges as employee e-mailing, texting, blogging and social networking have become routine workplace activities, and the line between what is "work" and "personal" has become blurred. In addition, today's technology is posing new questions for employment practices underwriters, as EPLI products are being reevaluated and adapted to address new privacy risks.

This panel will address these latest challenges and provide insights on:

- The most common situations leading to workplace privacy lawsuits
- Developing best practices for mitigating risk of breach of privacy claims
- Acquiring appropriate coverage to protect against workplace privacy lawsuits
 - What to look for in the fine print
 - When to approach your underwriter for improvements in the language relating to exact exposure situations
- What risk management steps need to be taken to account for gaps in coverage
- Assessing cyber security risks related to the e-workplace
- Understanding the intersecting roles of cyber insurance and EPL insurance

9:50

Avoiding Claims of LGBT Discrimination in the Workplace: Examining Recent EEOC and State Cases and Activity

Laura Lapidus

Management Liability (EPL)
Risk Control Director
CNA

Dennis Mont Brown

Littler Mendelson, P.C.

Laura B. Juffa

Kaufman Borgeest & Ryan LLP

- Examining the latest court activity involving claims of sexual orientation and gender identity discrimination
 - Developing best practices for approaching LGBT challenges in today's workplace: What policies should be established?
 - What training should be provided to employees and supervisors?
 - What complaint reporting procedures should be in place?
 - What accommodations should be provided to transgender employees?
- Understanding the protections afforded to LGBT employees in your particular state, and navigating such claims amidst inconsistent legal guidelines
- Addressing the recent DOJ position that Title VII does not cover sexual orientation – is the Trump EEOC following in this direction?
- Best practices for internally investigating claims of sexual orientation discrimination/harassment

10:40

Morning Coffee Break

10:55

Analyzing the Current Legal Landscape of Retaliation Claims: Complex Defense Challenges and Coverage Possibilities

Kristi Mackin Galletti

Sr. Claims Specialist
XL Professional Insurance

Jamie M. Kohen

Assistant General Counsel
JPMorgan Chase

Christopher M. Farella

Epstein Becker & Green P.C.

- Evaluating the latest notable workplace retaliation court decisions
- Analyzing the implications of the Supreme Court's decision in *Digital Realty Trust vs. Equinix*
 - Reviewing retaliation protections for whistleblowers
- Devising strategies for employers in implementing risk management techniques to prevent against retaliation claims, and overcoming the inherent difficulties in defending against such cases
- Developing best practices for managing employees who have sued the company
- Avoiding pitfalls in preventing and defending retaliation claims
- Counseling clients on establishing a model policy to protect the organization
- Ensuring you have proper and appropriate coverage for such claims

11:45

As the Boomers Boom – Navigating Today's Age Discrimination Challenges in the Workplace

David A. Schooler

Briggs and Morgan, P.A.

Rondiene E. Novitz

Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP

- Addressing the continuing rise in age discrimination claims as a record number of Americans are choosing to retire much later
- Developing practical solutions for employers in facing new and complex age discrimination challenges
- Avoiding pitfalls when engaging in the hiring or recruitment process in "younger industries" (e.g. tech, media)
- Devising essential steps for preparing for and defending the latest ADEA cases
- Understanding the uses and misuses of statistical evidence in age discrimination claims
 - Utilizing statistics to prove whether the adverse impact of firing an older employee is justified by a reasonable business necessity
- Looking ahead – predicting whether ageism claims by millennials will be on the horizon for employers?



12:30

Ethics Lab: Overcoming the Ethical Dilemmas Associated with the Relationship between Counsel, Insurer and Policyholder

Kristina Barcia

Assistant Vice President – Claims
AXIS Insurance

Jennifer O'Connor
Sauber LLC

- Examining the unique ethical challenges that arise from the relationship among counsel, insurer and policyholder
- Identifying and navigating the conflicts of interest that arise as a result of this tripartite relationship
- Analyzing the dual-client dilemma facing counsel retained by an insurance company to represent a policyholder
 - Devising strategies for overcoming the challenges created by this
- Establishing best practices for communicating with plaintiffs and company employees so as to avoid crossing ethical lines

1:30

Conference Ends – Lunch for Workshop Participants Begins



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Post-Conference Workshop B

Wednesday, January 31, 2018

2:30 – 4:30 (Separate Registration Required)

EPL Negotiation Master Class: A Tactical Tool-Kit for Negotiation, Mediation and Arbitration (Including Overseas Arbitration) of EPL Claims

Kristi Mackin Galletti

Sr. Claims Specialist
XL Professional Insurance

Kenneth P. Carlson, Jr.

Constangy, Brooks, Smith & Prophete, LLP

Joseph Z. Fleming

Greenberg Traurig, P.A.

A Skills-Focused Workshop for Engaging in Successful Alternative Dispute Resolution of Workplace Liability Actions

- Developing winning strategies for arbitrating EPL claims
- Assessing the challenges of overseas arbitration of EPLI coverage disputes, and tips on how to protect oneself during the process
- Establishing strategies for settling collective and class EPL actions

- Understanding how the actual EPL policy can play a crucial role in the settlement and mediation of cases
- Evaluating recent successes and failures in the use of ADR to resolve EPL claims
 - Analyzing examples of what has worked, what has not worked, and why
- Identifying key break points during litigation at which to consider mediation
- Devising tactics for persuading employees, employers and carriers to attempt mediation
- Assessing the costs of litigation and conducting a cost/benefit analysis to determine your ADR options
- Developing strategies for achieving a result in arbitration/mediation that is satisfactory to all parties
- Assessing the merits of arbitration as a means of resolving a discrimination, harassment or other employment practices claim



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