

The 34th Annual National Institute on

ERISA Basics

October 16-18, 2019

American Bar Association

321 North Clark Street

Chicago, IL 60654

Early Bird Registration: September 18th

Hotel Reservations Deadline: September 24th

*Register On-line: www.americanbar.org/jceb
(202) 662-8676*



15.00 CLE Credit Hours have been requested from 60-minute states
18.00 CLE Credit Hours have been requested from 50-minute states
Including 1.00 CLE Credit Hour of Ethics

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Jeffrey Monhart, *U.S. Department of Labor*, Chicago, IL

Radha Pathak, *Stris & Maher*, Los Angeles, CA

Aliya Robinson, *Program Co-Chair*, *The ERISA Industry Committee (ERIC)*,
Washington, DC

Joanne Roskey, *Program Co-Chair*, *Government Attorney*, Washington, DC

Cecilia Scanlon, *Baum Sigman Auerbach & Neuman, Ltd.*, Chicago, IL

Lisa Serebin, *Creitz & Serebin LLP*, San Francisco, CA

Amanda Sonneborn, *Seyfarth Shaw*, Chicago, IL

Ruth Silver Taube, *Silver & Taube*, Sunnyvale, CA

Simon Torres, *Pension Benefit Guaranty Corporation*, Washington, DC

Carolyn Trenda, *McGuireWoods LLP*, Chicago, IL

Thomas Tso, *Pension Benefits Security Division*, *U.S. Department of Labor*,
Washington, DC

Dorothy A. Voigt, *Law Offices of Dorothy A. Voigt*, Elgin, IL

David M. Weiner, *Willis Towers Watson*, Chicago, IL

Jeanne Klinefelter Wilson, *Principal Deputy Assistant Secretary*, *Employee Benefits
Security Administration*, *U.S. Department of Labor*, Washington, DC

WEDNESDAY, OCTOBER 16, 2019

8:00-

8:30 **Registration and Networking Continental Breakfast (Non-CLE)**

8:30-

8:45 **WELCOMING REMARKS AND OVERVIEW OF PROGRAM (Non-CLE)**

Program Co-Chairs:

Cassie Springer Ayeni, *Springer Ayeni, APLC*

Benjamin Eisner, *Spear Wilderman, PC*

Joanne Roskey, *Government Attorney*

8:45-

9:35 **ERISA BASICS CONCEPTS – STATUTORY OVERVIEW**

This session will provide a high-level overview of ERISA, including what is a plan, what is a plan fiduciary, what is a plan sponsor, and who is an employee. It also will discuss the differences between the types of pension plans and types of welfare benefit plans.

Cassie Springer Ayeni, *Springer Ayeni, APLC*

Benjamin Eisner, *Spear Wilderman, PC*

Joanne Roskey, *Office of the Solicitor, U.S. Department of Labor*

9:35-

10:25 **MINIMUM STANDARDS FOR TAX-QUALIFIED RETIREMENT PLANS – PART I**

The Internal Revenue Code requires that a retirement plan meet minimum standards to be qualified in order for employers and employees to receive tax benefits related to participation in employee benefit plans. This session will introduce and explore those standards, outlining the complicated rules with which employers and plans must comply to establish a tax qualified plan. It also will provide an opportunity to delve deeper into the qualification standards for retirement plans and to discuss with experienced practitioners any issues related to compliance with these standards. In Part I, the focus will be types of plans and plan formulas, definition of employee, calculating service, participation and coverage, minimum coverage testing, vesting, forfeitures, plan loans, IRS determination process, and defined contribution nondiscrimination testing rules.

Al Holifield, *Holifield, Janich & Ferrera, PLLC*

Ginger LaChapelle, *Blitman & King LLP*

10:25-

10:40 **Morning Break (Non-CLE)**

10:40-

11:40 **MINIMUM STANDARDS FOR TAX-QUALIFIED RETIREMENT PLANS – PART II**

Continuing the broad introduction to the rules for Qualified Plans under the Internal Revenue Code, in Part II, the focus will be benefit accrual rules, benefit limitations, defined benefit nondiscrimination testing rules, minimum funding rules, timing of benefit payments, forms of benefit payments and taxation of benefits. Attendees will have an opportunity to discuss issues with experienced practitioners.

Al Holifield, *Holifield, Janich & Ferrera, PLLC*

Ginger LaChapelle, *Blitman & King LLP*

11:40-

12:40 **GOVERNMENT ENFORCEMENT—Reporting and Disclosure**

ERISA imposes extensive reporting and disclosure requirements. In this session you will hear from the Department of Labor and practitioners regarding the requirements of plan reporting, and what must be included for compliance with ERISA's regulatory scheme.

Moderator: Joanne Roskey, *Office of the Solicitor, U.S. Department of Labor*

Ruben Chapa, *Office of the Solicitor, U.S. Department of Labor*

Victoria Cosentino, *U.S. Department of Labor*

12:40-

2:00 **LUNCHEON ADDRESS (Non-CLE)**

Jeanne Klinefelter Wilson, *Principal Deputy Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor*

2:00-

3:00 **GOVERNMENT ENFORCEMENT—Agency Programs and Investigations**

In the second session regarding Government Enforcement of ERISA we will hear from Department of Labor representatives regarding the Department's enforcement program. Panelists will cover how the Department has structured the enforcement program and how the Department conducts investigations. Panelists also will comment on current Department enforcement priorities and initiatives.

Ruben Chapa, *Office of the Solicitor, U.S. Department of Labor*

Jeffrey Monhart, *U.S. Department of Labor*

3:00-

3:50 **FEDERAL REGULATION OF HEALTH PLANS**

This session will address federal employee welfare benefit plan regulation, including the Affordable Care Act, COBRA, ADA, GINA and other statutes and regulations. This session also will focus on the reporting and disclosure requirements that generally apply to ERISA-governed health plans, including ACA reporting issues.

Edward Bogle, *U.S. Department of Labor (invited)*

Denise M. Clark, *Clark Law Group, PLLC*

Ada Dolph, *Seyfarth Shaw*

Rhona S. Lyons, *Schuchat Cook & Werner*

3:50-

4:05 **Afternoon Break (Non-CLE)**

4:05-

5:05 **ERISA PREEMPTION**

This session will introduce the fundamental principles of ERISA preemption, the impact preemption has on other legislation related to employee benefit plans and the exceptions to preemption the statute permits. It will detail how ERISA preemption has changed since the statute's inception, and discuss its current effect on state plan regulation.

Marie E. Casciari, *DeBofsky Sherman Casciari Reynolds, P.C.*

Angel Garrett, *Trucker Huss, APC*

Megan Hansen, *Office of the Solicitor, U.S. Department of Labor*

Rhona S. Lyons, *Schuchat Cook & Werner*

5:00 **Adjourn followed by a Networking Reception (Non-CLE)**

THURSDAY, OCTOBER 17, 2019

8:00-

8:30 **Registration and Networking Continental Breakfast (Non-CLE)**

8:30-

9:30 **FIDUCIARY STANDARDS – PART I**

This session will introduce ERISA's complex definition of fiduciary and discuss ERISA's fiduciary duties. It also will discuss the responsibilities entailed in investing plan assets, and the difference between a plan sponsor and plan fiduciary.

Lisa Serebin, *Creitz & Serebin LLP*

Peter Dickinson, *Bush Gottlieb, LC*

Hillary August, *Morgan, Lewis & Bockius LLP*

Thomas Tso, *U.S. Department of Labor*

9:30-

10:30 **FIDUCIARY STANDARDS – PART II**

Continuing from session one, this session will provide an overview of prohibited transactions, a technical ERISA concept, as well as an overview of remedies for fiduciary breaches. This session also will provide pointers for compliance with the ERISA's mandates and, time permitting, will touch on hot topics in ERISA fiduciary and class action litigation.

Lisa Serebin, *Creitz & Serebin LLP*

Peter Dickinson, *Bush Gottlieb, LC*

Hillary August, *Morgan, Lewis & Bockius LLP*

Thomas Tso, *U.S. Department of Labor*

10:30-

10:45 **Morning Break (Non-CLE)**

10:45-

11:35 **BENEFIT CLAIMS – PART I: ADMINISTRATIVE PROCEDURES**

ERISA requires and prescribes extensive procedures for the internal processing of claims and appeals. A near-universal prerequisite to bringing suit when benefit claims are denied is the pre-suit appeal required by 29 U.S.C. § 1133. This program will cover the statutory basis for pre-suit appeals, when such appeals may be excused, and the rules and regulations governing pre-suit appeals.

Rebecca K. Bryant, *Ogletree, Deakins, Nash, Smoak & Stewart, PC*

Cecilia Scanlon, *Baum Sigman Auerbach & Neuman, Ltd.*

Ruth Silver Taube, *Silver & Taube*

11:35-

12:35 **BENEFIT CLAIMS – PART II: LITIGATION OVERVIEW**

Not all claims are resolved internally. This program will cover topics arising in the litigation of employee benefit claims, including basic civil procedure, the availability of juries, discovery, evidentiary considerations, and disposition of claims. This program will then address what occurs when suit is filed for benefits under an ERISA plan, including exhaustion, evidence the district court may consider, the judicial standards of review applied in benefit claims litigation, and the doctrine of conflict of interest. The panel will address procedural issues and strategies to be considered by both the claimant and the plan/plan sponsor in the review process and in litigation.

Michael Bartolic, *The Law Offices of Michael Bartolic, LLC*

Rebecca K. Bryant, *Ogletree, Deakins, Nash, Smoak & Stewart, PC*

Cecilia Scanlon, *Baum Sigman Auerbach & Neuman, Ltd.*

12:35-

1:45 **Lunch (On Your Own) (Non-CLE)**

1:45-

2:45 **DISCRIMINATION IN AND INTERFERENCE WITH EMPLOYEE BENEFITS**

The breadth of protections under ERISA, the Affordable Care Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, as amended, and the Age Discrimination in Employment Act has been enlarged by recent regulatory actions of the EEOC, HHS, and DOL. This session will review potential claims in litigation, including interference with an employee's employment relationship with the specific intent of interfering with her attainment of benefits or future rights under a plan, and retaliation against an employee for utilizing her benefit rights or for complaining about violations of ERISA. Discrimination in the provision of benefits or in access to health care, with a particular focus on denial of access on the basis of disability, sex, and sexual orientation also will be addressed. Additionally, the session will review how ERISA overlaps with other federal employment statutes when employees assert that employers have misclassified them under the Fair Labor Standards Act or have altered their terms and conditions of employment in order to avoid mandated benefits or statutory penalties under the Affordable Care Act.

Jennie Arnold, *Ledbetter, Parisi LLC*

Denise M. Clark, *Clark Law Group, PLLC*

Hillary E. August, *Morgan, Lewis & Bockius LLP*

2:45-

3:00 **Afternoon Break (Non-CLE)**

3:00-

4:00 **REMEDIES**

ERISA remedies have been a vigorously contested battle ground, especially in the wake of *Cigna Corp. v. Amara*, which reinvigorated the debate over the scope of "appropriate equitable relief" under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). This panel will provide a brief overview on the types of remedies available under ERISA's major enforcement provisions, and then focus on remedies in the post-*Amara* world. Topics will include recent and pending cases on the scope of monetary relief under § 502(a)(3) as well as plan terms limiting the availability of equitable remedies.

Jennie Arnold, *Ledbetter, Parisi LLC*

Karen Handorf, *Cohen Milstein Sellers & Toll PLLC*

Stacey Cerrone, *Proskauer Rose LLP*

Megan Hansen, *Office of the Solicitor, U.S. Department of Labor*

4:00-

5:00 **ERISA ETHICAL ISSUES AND CONCERNS: BASICS AND ETHICS IN A DIGITAL WORLD (ETHICS SESSION)**

This session will focus on key ethical rules and principles that should be considered by ERISA practitioners. Specific topics will include the identification of the client(s), the scope of ethical duties to clients and non-clients, the creation and consequences of multiple representations and related conflicts of interest. Additional potential topics may include the lawyer's duty to report wrongdoing of constituents in an organization, special ethical standards applicable to preparing tax opinions, rules applicable to multi-jurisdictional practice, and the attorney-client privilege (and related fiduciary exception) and attorney work product doctrine. Panelists will also address ethics concerns when using the internet and other technology, including blogging, commenting on community websites, advertising, social media, and website representations.

Tybe A. Brett, *Feinstein Doyle Payne & Kravec, LLC*

Benjamin Eisner, *Spear Wilderman, PC*

Simon Torres, *Pension Benefit Guaranty Corporation*

5:00 **Adjourn**

FRIDAY, OCTOBER 18, 2019 **AM CONCURRENT BREAKOUT SESSIONS**

8:00-

8:30 **Registration and Networking Continental Breakfast** (Non-CLE)**

8:30-

9:20 **Option # 1: MULTIEMPLOYER & OTHER COLLECTIVELY BARGAINED PLANS**

A general overview of the special rules and regulations governing multiemployer employee pension and welfare benefit plans under ERISA, including the Multiemployer Pension Plan Amendments Act of 1980, which created ERISA Section 515 for the collection of employer contributions, and which provided for the creation and enforcement of Withdrawal Liability. This panel will also cover the developing law and regulations affecting collectively bargained plans since the Pension Protection Act of 2006.

William M. Kinney, *Dowd Bloch Bennett Cervone Auerbach & Yokich*
Aliya Robinson, *The ERISA Industry Committee*

Option # 2: SPOUSAL RIGHTS UNDER ERISA PLANS: QDROs, AND QMCSOs

The benefits provided by employee benefit plans generally may not be alienated. This session will address the exceptions to this broad rule, introducing the basics of QDRO's, QMSCOs, and other spousal and related rights. The panelists will also discuss the rights of same-sex spouses following the *Windsor* and *Obergefell* decisions as well as the requirements that must be met before Court or other orders that alienate a participants' pension in a divorce situation can be honored, as well as requirements for providing employer sponsored group medical benefits to dependents in a divorce or other child support situation. It will also discuss the employers' and plans' responsibility for enforcing such orders.

Robert Gower, *Trucker Huss, APC*
Suzanne Metzger, *1199SEIU Benefit Funds*
Dorothy A. Voigt, *Law Offices of Dorothy A. Voigt*

9:20-

10:10 **Option # 1: SECTION 401(k) PLANS**

This session covers the basics of the who, what, where, when and how of Section 401(k) plans. This session outlines all of the fundamental tax code and ERISA rules that govern the daily operation of a Section 401(k) plan.

Jeffrey M. Holdvogt, *McDermott, Will & Emery*
Carolyn Trenda, *McGuireWoods LLP*

Option # 2: EXECUTIVE COMPENSATION

This session will be an overview of the fundamentals of deferred compensation (including Code Section 409A), equity compensation, SERPs, excess plans, and golden parachutes.

Susan Daley, *Perkins Coie LLP*
Jay Dorsch, *Cozen O'Connor*

10:10-

10:30 **Morning Break (Non-CLE)**

10:30-

11:20 **Option # 1: SUBROGATION AND REIMBURSEMENT CLAIMS**

Overpayment of benefit claims and efforts by plans to recover overpaid money have been the topic of several Supreme Court decisions that have informed practitioners about equitable remedies and the reach of ERISA preemption. The session will discuss the developing law of subrogation and plan reimbursement, including plan self-help remedies and plaintiff responses to collection efforts.

Radha Pathak, *Stris & Maher*

Amanda Sonneborn, *Seyfarth Shaw*

Option # 2: CAFETERIA PLANS AND OTHER FRINGE BENEFITS

This session will discuss the uses of cafeteria plans and explain the complex issues involved in establishing plans compliant with the Internal Revenue Code. Additionally, employees are increasingly expecting that their employers will offer more programs addressing these issues. This panel will discuss behavioral health benefit trends, including wellness programs, mental health benefits and EAPs, including the current rules and how to design compliant, effective benefit programs.

David M. Weiner, *Willis Towers Watson*

Suzanne Metzger, *1199SEIU Benefit Funds*

11:20 **Adjourn**

WHO SHOULD ATTEND?

For practitioners who address issues related to employee benefit plans, this 2 1/2-day National Institute will provide an opportunity to hear from the ERISA experts. Designed for in-house and union counsel, benefits specialists, private practitioners, litigators, and consultants, the focus is on comprehensive ERISA topics.

TUITION

Attend the entire two and half-day program, each breakfast, and the reception, and network with other registrants and faculty. Registrations must be postmarked, e-mailed or faxed by September 18th to receive the discount.

Early Bird Registration - On or Before September 18th

- \$1150 General Public
- \$1035 ABA Member
- \$920 Sponsoring Section Member

Full Tuition - After September 18th

- \$1213 General Public
- \$1092 ABA Member
- \$970 Sponsoring Section Member

On-Site Tuition

- \$1275 General Public
- \$1148 ABA Member
- \$1020 Sponsoring Section Member

ADDITIONAL SAVINGS

- Register 2 or more people from the same organization and receive \$50 reduction to the tuition rate indicated.
- Purchase the Employee Benefits Passport or are a current Employee Benefits Passport holder, receive 25% reduction to the tuition rate indicated.

For details or to receive the discounts, contact Mary.Karounos@americanbar.org.

SCHOLARSHIPS

A limited number of scholarships to defray tuition expenses are available for this program on case-by-case basis. Qualifying attorneys will receive at least a 50% reduction in the course fee(s). Preference will be given to full-time LL.B. candidates. Scholarship applications must be received in the ABA offices no later than thirty days prior to the program presentation. You will be notified prior to the program if your application is approved. To request an application or receive additional information, contact Mary Karounos at 202.662.8676 or Mary.Karounos@americanbar.org.

UNABLE TO ATTEND?

A digital audio set (course material and digital audio recordings via download) will be available for purchase approximately 4-6 weeks after the program. To pre-order your digital copy, refer to the order form at the end of this brochure. *The content of this audio set does not meet requirements for continuing legal education (CLE) accreditation. You will not receive CLE credit for the ERISA Basics National Institute Digital Audio Set.*"

Contact Mary.Karounos@americanbar.org for additional information.

MCLE

This course is expected to qualify for 15.83 CLE credit hours (including 1.00 ethics hours) in 60-minute states, and 19.00 CLE credit hours (including 1.20 ethics hours) in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. View MCLE details <https://www.americanbar.org/events-cle/mcle/inpersonevents/>

For more information about CLE accreditation in your state, visit the program website <https://www.americanbar.org/events-cle/mtg/inperson/376969259/>, the MCLE website http://www.americanbar.org/cle/mandatory_cle.html or contact Mary Karounos at 202.662.8676, via email at mary.karounos@americanbar.org.

CPE INFORMATION

The American Bar Association is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org.

Recommended CPE Credits and Fields of Study: Program attendees can earn up to 19.00 CPE credits in Specialized Knowledge including 1.00 CPE credit in Behavioral Ethics fields of study.

Prerequisites: None; Advanced Preparation: None; Program Level: Intermediate; Delivery Method: Group-Live.

QUESTIONS?

If you have a specific question that you want answered, you can email it up to the day before the program to Mary.Karounos@americanbar.org, or ask the speakers directly during the program presentation.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Mary Karounos at 202.662.8676 or Mary.Karounos@americanbar.org. Reasonable advance notice is requested.

CANCELLATION POLICY

Cancellations will be honored on the following basis:

- On or before September 18th—100% Refund minus \$50 administrative fee
- After September 18th—No Refund**

Substitute registrants are welcome. Please contact customer care via email meetingcancellations@americanbar.org.

*“Day of Cancellation” is the day the cancellation is received, by telephone or in writing, by the ABA.

**No refunds will be made for cancellation requests received after September 18th; written confirmation of refund requests must be received within 14 days following the National Institute presentation.

COMPLAINT RESOLUTIONS

Please contact Mary Karounos at 202.662.8676.

PROGRAM CONFIRMATION

Written confirmation of your registration will be e-mailed to you. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the program, call the ABA at 202.662.8676 to confirm that your registration was received and the program is being held as scheduled.

HOTEL INFORMATION

DEADLINE FOR HOTEL RESERVATIONS: SEPTEMBER 24

Kinzie Hotel

Twenty West Kinzie Street, Chicago, IL 60654

We have a limited number of rooms blocked with the Kinzie Hotel at a special rate of \$229 for single or double occupancy. All room rates are subject to city occupancy and sales tax. Unclaimed rooms will be released on September 24th after which the hotel will accept reservations on a space and rate available basis only. All reservations must be guaranteed with a major credit card.

If you are interested in booking a reservation at the Kinzie Hotel please contact the hotel directly at 312.395.9000 and refer to the Joint Committee on Employee Benefits.

AIRLINE INFORMATION

ABA NEGOTIATED AIRFARE DISCOUNTS – AVAILABLE ONLINE!

With **ABA Egencia**, you can automatically obtain ABA negotiated airfare discounts for travel to the ABA Meetings. ABA Egencia enables you to purchase the best airfare at the time of booking, by providing you with the ability to search for and compare fares from virtually every airline serving the destination.

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For ABA Meetings Only

Via Phone: 800-426-1122

Agreement Code: 8880300 / Z Code: **ZFX6**

Discount available at www.united.com

Click **All Search Options** and enter Online Discount Code: **ZFX68880300** in the **Promotions and Certificates** box.

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Via Phone: 800-328-1111

ABA File Global Meeting Code: NMS9P

Discount available at www.delta.com

Click **Advance Search** and enter Online Meeting Event Code: **NMS9P** in the **Meeting Event Code**

Southwest Airlines

Southwest tickets can be booked on ABA Egencia. If not booking via ABA Egencia you can book via www.swabiz.com and use ABA SWABIZ Company ID **99422890**.

Travel Profile is Required

*A Travel Profile is required when booking airline reservations with ABA Egencia. [For more information click here.](#)

For additional ABA travel discounts visit www.americanbar.org/travel.

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For more information call 202.662.8641 or see the JCEB’s website:

<http://www.americanbar.org/jceb>

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www.americanbar.org/jceb

October 28-29

National Institute on

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Arlington, VA

November 7-8

National Institute on

EXECUTIVE COMPENSATION

Washington, DC

Spring 2020

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ERISA BASICS

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Spring 2020

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Washington, DC

Spring 2020

EMPLOYEE BENEFITS SPRING UPDATE

Washington, DC