

■ **January 25–26, 2022 (EST) • Virtual Conference**

30<sup>th</sup> National Conference on

# EMPLOYMENT PRACTICES LIABILITY INSURANCE

*Strategic Guidance for Tackling New, High Stakes Challenges Affecting Litigation and Claims Outcomes*

## KEY UPDATES FROM THE EEOC:



**Keith E. Sonderling**  
*Commissioner*  
**U.S. Equal Employment Opportunity Commission**

Hear from Leading Brokers and Carriers on the State of the EPLI Market and Claims Management:

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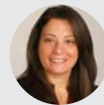
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*Executive Senior Counsel, Compliance, Litigation and Labor & Employment*  
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## Don't Miss Forward-Looking, Practical Discussions:

- **Back to the Office:** How Employers and Insurers are Addressing Vaccine Mandates, Testing, Accommodation Requests and OSHA Compliance
- **PAGA and the "Gig Economy":** New Liability Risks Arising from Remote, In-Person, and Hybrid Work
- **"The Great Resignation":** The Newest Hurdles to Enforcing and Managing Restrictive Covenants amid Extraordinary Employee Turnover
- **The Risk-Benefit Equation for Remote and Hybrid Work:** Performance Tracking, Disability and Harassment Claims and Privacy

# ACI welcomes you as we return for the 30<sup>th</sup> Anniversary EPLI Conference!

## IMMERSE YOURSELF IN COMMUNITY, CONTENT, AND LIVE CONVERSATION.

- » The 30<sup>th</sup> Annual EPLI National Conference is the **premier event** for the employment law and insurance community as the pandemic and path forward drive risk to new heights.
- » Practical, carefully researched content that probes only **the most cutting-edge strategies** and emerging trends amid unprecedented uncertainty.
- » Updates from the EEOC: Don't miss a highly anticipated fireside chat with **EEOC Commissioner, Keith Sonderling**.
- » **Join us virtually!** Meet and benchmark with leading in-house executives. Don't miss out on the highly anticipated reunion of the community!

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General Counsel and Corporate Secretary  
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**Jane Duke**  
Chief Compliance Officer, VP and Associate  
General Counsel  
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**Lori Armstrong Halber**  
Partner  
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**Sami Asaad**  
Partner and Chair, Home Healthcare  
Practice Group  
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**Elina Basham**  
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**Magdalen Bickford**  
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**Justin J. Blacklock**  
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**Raymond Cashman, Esq., CPCU**  
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**Mercedes Colwin**  
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Gordon Rees Scully Mansukhani LLP



**William D. Frumkin, Esq.**  
Of Counsel  
Frumkin & Hunter Law PC



**John W. Hamlin, Esq.**  
Chief Counsel, Employment, Benefits and  
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Marsh & McLennan Companies, Inc.



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Vice President, Financial Institutions Claims  
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**Jonathan Kurens, Esq.**  
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**Jordan Kurkowski**  
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**Laura R. Lapidus, Esq.**  
Management Liability (EPL) Risk Control Director  
CNA Insurance



**Lisa Parlato LeDonne**  
VP and General Counsel, Data Privacy/  
Chief Privacy Officer and Chief Labor &  
Employment Counsel  
Honeywell



**Doreen E. Lilienfeld**  
Partner, Global Governance and Advisory  
Practice Leader  
Shearman & Sterling



**Gerald Maatman**  
Partner & Co-Chair, Complex Discrimination/  
Class Action Practice Group  
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**Phillip R. Maltin**  
Partner, Chair of the Commercial & Employment  
Risk Control Department  
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**Samantha J. Manfredini Look, Esq.**  
Vice President, EPLI, Financial Services Group,  
Commercial Risk Solutions  
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Assistant General Counsel  
United Airlines



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Managing Partner  
Schwartz Perry & Heller LLP



**Jeffrey Rosenthal**  
Partner, Team Lead, Biometric Privacy  
Blank Rome LLP



**Jeffrey Rosier, Esq.**  
Senior Assistant General Counsel, Employment  
Marsh & McLennan Companies, Inc.



**Nishat Ruitter**  
General Counsel  
TED Conferences



**Bobby Simpson**  
Executive Senior Counsel, Compliance,  
Litigation and Labor & Employment  
GE Current, a Daintree Company




**Chris Williams**  
Managing Director  
Travelers

# DAY ONE: Tuesday, January 25 (EST)

7:30 Registration

8:45

## Co-Chairs' Opening Remarks

 **John W. Hamlin, Esq.**, *Chief Counsel, Employment, Benefits and Governance, Marsh & McLennan Companies, Inc.*

**Mercedes Colwin**, *Partner, Gordon Rees Scully Mansukhani LLP*



9:00 **BACK TO THE OFFICE**

## How Employers and Insurers are Addressing Questions Around Vaccine Mandates, Testing, Accommodation and Health & Safety

 **Lisa Parlato LeDonne**, *Vice President and General Counsel, Data Privacy/Chief Privacy Officer and Chief Labor & Employment Counsel, Honeywell*

**Bobby Simpson**, *Executive Senior Counsel, Compliance, Litigation and Labor & Employment, GE Current, a Daintree Company*

### MODERATOR:

**Magdalen Bickford**, *Member, Chair Labor and Employment Group, McGlinchey Stafford PLLC*

- The continuing impact of the pandemic and the outlook on associated risks for 2022
- Managing discrimination cases brought by employees refusing to get vaccinated based on disability, religion or political views
  - » What constitutes "reasonable accommodation" for employees under EEOC rules?
  - » Examples of "undue hardship" to the employer
- Recent retaliation claims around providing accommodation for employees who do not/can't get vaccinated due to a medical disability
  - » What are reasonable accommodations for employees suffering from "long-haul" COVID-19
  - » "At Risk Workers": Reasonable accommodations for those with weakened immune systems who are at risk if vaccinated and cannot use face coverings
- Employee data privacy: New claims relating to vaccination verification or contact tracing efforts
  - » State data privacy laws that differ from federal rules and guidelines
- OSHA compliance:
  - » State of OSHA's ETS rule and associated compliance planning
  - » NY HERO Act compliance
  - » What are the differences between the NY HERO Act and IL, ME, CT, and NJ workplace safety laws?
  - » Recent whistleblower complaints

- OSHA compliance: Hidden lessons from recent employee retaliation claims around unsafe work environments
  - » Lack of PPEs
  - » Negligence around social distancing retrofits to combat virus spread
  - » NY HERO Act compliance
    - What are the differences between the NY HERO Act and IL, ME, CT, and NJ workplace safety laws?
  - » Lessons from recent whistleblower complaints



10:00

## The Risk-Benefit Equation for Remote and Hybrid Work: Performance Tracking, Disability and Harassment Claims, Data Protection and Privacy

 **Elina Basham**, *Corporate Counsel, Paychex*

**Jonathan Kurens, Esq.**, *Senior Vice President, Marsh USA Inc.*

**Sami Asaad**, *Partner and Chair, Home Healthcare Practice Group, Ford Harrison*

Remote and hybrid work arrangements provide much needed work flexibility, but also present new legal risks and uncertainties.

- Managing requests for a remote work accommodation due to a medical condition
- Dealing with out-of-state remote workers: Cross-border legal and tax compliance considerations
  - » Interplay of other states' civil rights protections and unpaid/paid leave requirements
- Cybersecurity: Using simulated platforms to test employees on threat detection
- The interplay between remote work performance tracking technology and privacy law limits
  - » Social media laws (including in Arkansas) that prohibit employers from requesting employees' login information for social media sites
  - » Monitoring and recording telephone conversations, Zoom and Teams calls, emails, and internet usage outside of legitimate business purposes
  - » ADA, HIPAA and GINA: Related laws triggered if employers breach employee medical and health information
  - » Preventing FCRA pitfalls when making hiring decisions
- Disability claims: Drawing the line between reasonable accommodation and "undue hardship"
  - » The scope of accommodation for employees working from home or employees not given the option to work remotely
  - » Claims around non-ADA compliant company websites: Understanding Web Content Accessibility Guidelines (WCAG) standards and ADA Title III requirements
- Confidentiality, the need for "A Room to Zoom", and data protection
- Managing evolving harassment claims amid a remote workforce
- Training managers responsible for implementing a remote workforce policy

11:00 **Extended Networking Break**

## Insurance Carriers and Brokers Discuss the Impact of Biden Administration Priorities and the Anticipated Rise in Claims

 **Raymond Cashman, Esq.**, *Director, Management Liability and Specialty Claims*, **Nationwide**

**Samantha J. Manfredini Look, Esq.**, *Vice President, EPLI, Financial Services Group, Commercial Risk Solutions*, **Aon**

**Justin J. Blacklock**, *Assistant Vice President, North America Financial Lines*, **Chubb**

**MODERATOR:**

**Lori Armstrong Halber**, *Partner*, **Fox Rothschild LLP**

- How the EPLI market is evolving: New and anticipated trends to flag now
- Biden Administration priorities and the impact on employers
- Are carriers exiting certain classes of business? Are there any new carriers in the market?
- When underwriters are adding new exclusions to policies
- Lessons from the Bermuda EPLI marketplace: How are policies changing?


## INTERVIEW WITH THE EEOC



**Keith E. Sonderling**  
*Commissioner*  
**U.S. Equal Employment Opportunity Commission**

## Heightening Boardroom Diversity and Inclusion: Legal, Investment and Reputational Issues that Are on the Line

**SPEAKERS INCLUDE:**


 **Doreen E. Lilienfeld**, *Partner, Global Governance and Advisory Practice Leader*, **Shearman & Sterling**

Learn about the latest in boardroom diversity through the lens of recent rulings, trends, and an evolving boardroom D&I landscape.

- Developing strategies to integrate non-U.S. corporate group members into U.S.-led boardroom DE&I initiatives
- The tech sector's diversity imperative: Impact of the SEC approval of NASDAQ's Board Diversity Proposals Rules and Board Diversity Matrix
- Will the NYSE follow suit?
- Comparing and contrasting state-level approaches around boardroom diversity rules, including California's SB 826 and AB 979
- Institutional investors as a driving force behind board diversity disclosures
- Data privacy risks around collecting board across jurisdictions



## Issues in Enforcing and Managing Restrictive Covenants amid Extraordinary Employee Turnover


 **Gerald Maatman**, *Partner & Co-Chair, Complex Discrimination/Class Action Practice Group*, **Seyfarth Shaw**

**Jeffrey Rosier, Esq.**, *Senior Assistant General Counsel, Employment*, **Marsh & McLennan Companies, Inc.**

Through a review of sample non-competition clauses and analyses of their enforceability, gain an understanding of the importance of considering where an employee works and lives vs. where the employer operates when interpreting clauses.

The discussion will also cover what in-house counsel should be aware of when hiring a new employee subject to a restrictive covenant, seeking to enforce a restrictive covenant against a departing employee, and reviewing and updating a company's existing restrictive covenants.

## The Latest Trends and Claims Coming Down the Pipeline

 **William D. Frumkin, Esq.**, *Of Counsel*, **Frumkin & Hunter Law PC**

**David S. Perry**, *Managing Partner*, **Schwartz Perry & Heller LLP**

**MODERATOR:**

**Raymond Cashman, Esq., CPCU**, *Director, Management Liability and Specialty Claims*, **Nationwide**

During this session, benefit from first-hand perspectives from plaintiff-side counsel on the employment law landscape and new, emerging trends.

## Conference Adjourns



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# DAY TWO: Wednesday, January 26 (EST)

7:30 Registration

9:00

## Co-Chairs' Opening Remarks

 **John W. Hamlin, Esq.**, *Chief Counsel, Employment, Benefits and Governance, Marsh & McLennan Companies, Inc.*

**Mercedes Colwin**, *Partner, Gordon Rees Scully Mansukhani LLP*

9:05 GENERAL COUNSEL PANEL

## Perspectives on Pressing, High Stakes Issues at the Forefront



**Jessica Mastrogiovanni**  
*General Counsel and Corporate Secretary*  
**Brooks Brothers**

10:00 PAGA AND THE "GIG ECONOMY"



## New Liability Risks Arising from Remote, In-Person, and Hybrid Work

 **Michael Holocek**, *Partner, Gibson, Dunn & Crutcher LLP*

**Phillip R. Maltin**, *Partner, Chair of the Commercial & Employment Risk Control Department, RainesFeldman*

- The Gig Economy and wage and hour liability:
  - » New, changing legislation and initiatives, including Proposition 22
  - » How Proposition 22 is influencing other states' gig worker laws
  - » Federal Fair Labor Standards Act (FLSA) lawsuits over worker classification
- PAGA claims:
  - » New, emerging PAGA litigation trends
  - » Liability that may arise from work-from-home arrangements, new compensation/bonus plans, staffing issues, and workplace safety requirements
  - » Regular rate, wage statement, meal/rest period premium, and timekeeping requirements
  - » Developing PAGA litigation strategies regarding the plaintiff's standing, jurisdiction and venue

11:00 Networking Break

11:15

## INTERVIEW EXCLUSIVE




**Jane Duke**  
*Chief Compliance Officer, Vice President and Associate General Counsel*  
**Tyson Foods**



**MODERATOR:**  
**Mercedes Colwin**  
*Partner*  
**Gordon Rees Scully Mansukhani LLP**

11:45 LOOKING AHEAD

## The Present and Future of D&O Insurance, Policy Language, Restrictive Covenants and Proprietary Data Protection

 **Jordan Kurkowski**, *Vice President – Management and Professional Liability, AmWINS*  
**Lisa Z. Jacobson, Esq.**, *Vice President, Financial Institutions Claims, Sompo International*


Securities litigation and regulatory investigations tied to D&O insurance are anticipated to ramp up in 2022. During this session, gain real-world takeaways on the D&O insurance landscape and evolving risk factors.

- Is D&O policy language becoming more restrictive amid the pandemic? Are rates increasing?
- D&O policy "Wrongful Acts" definitions and circumstances
- D&O insurance risk mitigation via a "notice of circumstances" that triggers a policy before a claim arises
- Insolvency/COVID-19 exclusions

12:30 Lunch Break

1:45 DIVERSITY, EQUITY AND INCLUSION

## Return to Work through a DE&I Lens: Real-World Examples and Takeaways


 **Javaria Neagle**, *Assistant General Counsel, United Airlines*  
**Nishat Ruiter**, *General Counsel, TED Conferences*

**MODERATOR:**  
**Camille Bryant**, *Member, McGlinchey Stafford PLLC*

- How the pandemic and depressed economy has slowed DE&I program progress
- The impact of workforce reductions on DE&I programs
- An opportunity to reimagine DE&I programs: How the pandemic has reset norms for how employees work and has spurred DE&I progress

2:45 BIOMETRICS AND DATA PRIVACY

## The Lesser Known Litigation Trends and Lessons Learned

 **Christopher Williams**, *Managing Director, Travelers*  
**Laura R. Lapidus, Esq.**, *Management Liability (EPL) Risk Control Director, CNA Insurance*  
**Jeffrey Rosenthal**, *Partner, Team Lead, Biometric Privacy, Blank Rome LLP*


Litigation under privacy laws protecting individuals' biometric information has exploded – and will likely continue to increase. During this session, benefit from key updates and emerging trends to monitor.







- Laws regulating the use of biometric data and recent litigation examples: Illinois and BIPA
- Biometric claims that could trigger coverage under D&O policies
- Changes to EPLI cyber policies and coverage for biometric screening
- Emerging biometric technologies that support remote workforce management and potential data privacy risks

3:45 Co-Chairs' Closing Remarks & Conference Concludes


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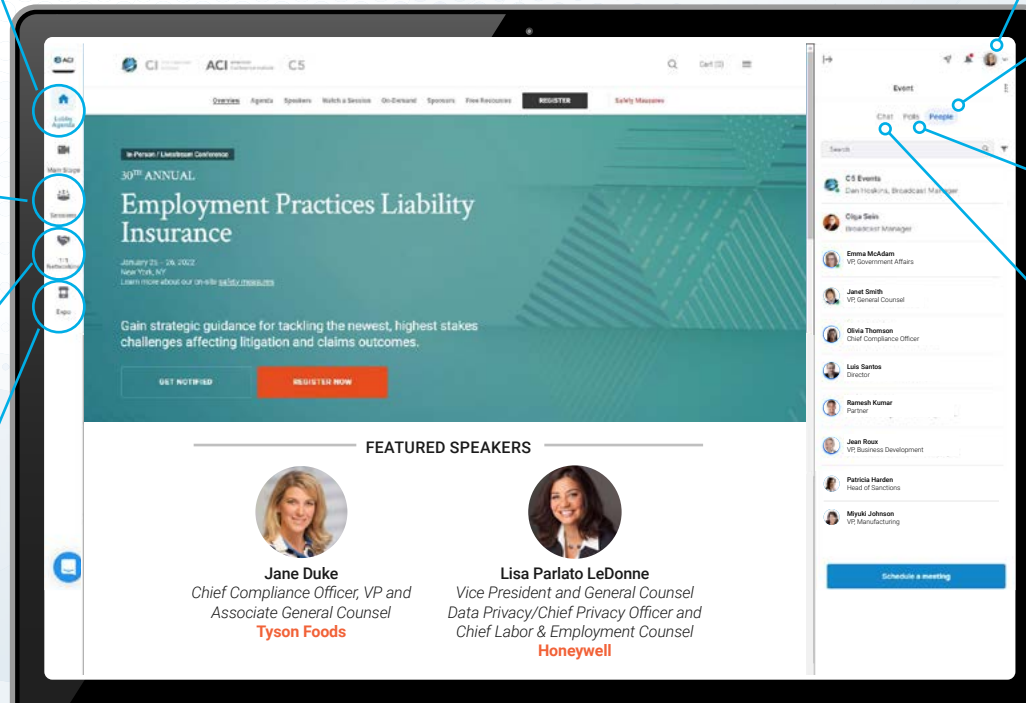
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