



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

John F. Harkness, Jr.  
Executive Director

850/561-5600  
www.FLORIDABAR.org

## MEMORANDUM

---

To: Labor and Employment Law Section Executive Council Members  
From: Angie Froelich, Section Administrator  
Date: October 20, 2015  
Re: Agenda for Executive Council Meeting on October 22, 2015

---

The Labor & Employment Law Section executive council meeting will take place on Thursday, October 22, 2015, at **5:00 p.m.** at The Florida Hotel & Convention Center, 1500 Sand Lake Road, Orlando, FL 32809, (407) 859-1500, [www.thefloridahotelorlando.com](http://www.thefloridahotelorlando.com).

The agenda and supporting documents for this meeting are enclosed.

The conference call information is:

Toll-free number: 888-376-5050  
Conference Code: 1563821345 and #  
Customer Service: 866-640-5038

*Hotel Room Assignments:*

*Labor EC Meeting: Legacy North 2*  
*Reception: TBD*  
*Seminar: Salons 3*

Angie



## **AGENDA**

*Labor and Employment Law Section Executive Council Meeting  
Thursday, October 22, 2015 • 4:45 p.m. e.s.t.*

**I. Call To Order** – Hon. Frank E. Brown, Chair

**II. Secretary/Treasurer Report** – Zascha Blanco Abbott

- A. Consideration of Minutes – September 17, 2015 (**Attachment A**)
- B. Financial Statement – August, 2015 (**Attachment B**)

**III. Committee and Subcommittee Reports**

- A. Outreach Committee – Leslie Langbein
  - a. ABA Liaison Subcommittee – Cynthia Sass/Robert Turk
  - b. Law School Liaison Subcommittee – Freddy Perera/Cristina Velez
  - c. Judicial Outreach Subcommittee – Zascha Blanco Abbott/John D. Hoffman
  - d. Local/Voluntary Bar Association Liaison Subcommittee – Scott Atwood/Sacha Dyson
  - e. EEOC and FEPA Liaison Subcommittee – Kristen Foslid/Marquis Heilig/Cheyenne Costilla
  - f. NLRB and PERC Liaison Subcommittee – Nick Karatinos/Stephen A. Meck/Gregg Morton
  - g. Wage and Hour Administration Liaison Subcommittee Committee – Joseph G. Santoro/David Spalter
  - h. Membership Outreach Subcommittee – Leslie Reicin Stein/Lindsay Wagner
  - i. The Florida Bar Outreach Subcommittee – Sherril Colombo/Marlene Quintana
- B. Long Range Planning Committee – Hon. Alan O. Forst/Hon. Robert Kilbride
- C. Communications Committee – Hon. Stephanie W. Ray
  - a. Publications Subcommittee – Jay Lechner/Rob Eschenfelder
  - b. Website Subcommittee – Hon. Stephanie W. Ray/Brian L. Lerner
  - c. Social Media / Advertising Subcommittee – Cathleen Scott/Brian L. Lerner
- D. Special Projects Committee – Marlene Quintana
  - a. Certification Standards Review Subcommittee – Sherril M. Colombo/Frank Brown
  - b. FLSA Procedures Subcommittee – Shane Munoz

**IV. Continuing Legal Education – Cathleen Scott**

- A. 41st Annual Public Employment Labor Relations Forum – The Florida Hotel & Conference Center, Orlando FL – October 22-23, 2015
- B. Webinar Series – Forthcoming
- D. 16th Annual Labor & Employment Law Update & Certification Review Seminar – Orlando FL January 28-29, 2016
- E. Practice Before State Labor & Employment Law Agencies – University Center Club, Tallahassee, FL – April 1, 2016
- F. Advanced Labor Topics – Amelia Island Ritz Carlton – May 2, 2016
- G. Presidential Showcase? – June 2016 Annual Meeting

**V. New Business**

- A. Approval of 2016-17 Proposed Budget (**Attachment B2**) – Zascha Abbott
- B. Long Range Planning Retreat Location/Time – Hon. Alan O. Forst/Hon. Robert Kilbride
- C. Practice Resource Institute – Kevin Johnson/Frank Brown
- D. Certification Proposals (**Attachments**) – Sherril Colombo/Frank Brown

**VI. Chair’s Report**

**VII. Informational**

- A. 6:00 p.m. – 7:00 p.m. Reception

**VIII. Adjournment**

**Labor and Employment Law Section Executive Council Meeting Minutes**  
**West Palm Beach Marriott, 1001 Okeechobee Boulevard, West Palm Beach, FL 33401**  
**Thursday, September 17, 2015 5:00 P.M. EST**

**I. Call To Order** – Honorable Frank E. Brown, Chair

Chair Frank Brown called the meeting to order. A quorum of the Executive Council was present either in person or by phone.

He presented the minutes for the June 25, 2015 meeting. The minutes were approved with one correction.

**II. Secretary/Treasurer Report** - Zascha Blanco Abbott

Zascha Abbott reported on the Section's Final Financial Statement for 2014-2015. It showed that revenues had gone up from last year and the expenses were lower than budgeted. The resulting fund balance increased to \$197,953.

**III. Committee Reports**

Chair Frank Brown, mentioned that a few new subcommittee co-chairs were appointed. He would like to have more joint projects and subcommittees working on projects together.

Leslie Langbein is Chair of the Outreach Committee. This should help with subcommittees working together on certain projects.

Bob Turk will serve as a co-chair of the ABA Liaison Subcommittee.

Cheyenne Costilla of the FCHR has been added as co-chair of the EEOC and FEPA Liaison Subcommittee.

Gregg Morton has been added as a co-chair of the NLRB and PERC Liaison Subcommittee.

**A. Outreach Committee** – Leslie Langbein

1. ABA Liaison Subcommittee – Cynthia Sass/Robert Turk: The subcommittee is planning on having events with ABA in 2016. Bob Turk is coordinating with Gail Holtzman who is currently President-Elect of the ABA Labor and Employment Section.

2. Law School Liaison Subcommittee – Freddy Perera/Cristina Velez: The subcommittee had 100 percent compliance last year and plan to have the same this year. In

the process of confirming the deadline.

3. Judicial Outreach Subcommittee – Zascha Blanco Abbott/John Hoffman: The subcommittee just received its list of committee members and are in the process of scheduling a committee conference call to schedule the events for the year.

4. Local/Voluntary Bar Association Subcommittee – Scott Atwood/Sacha Dyson: No report

5. EEOC and FEPA Liaison Subcommittee – Kristen Foslid/Marquis Heilig/Cheyenne Costilla: The subcommittee is working on a tool kit or similar resource, which will include a summary of the local FEPAs and their ordinances.

6. NLRB and PERC Liaison Subcommittee – Nick Karatinos/Stephen Meck/Gregg Morton: Gregg Morton reported that planning was complete for the 41st Annual PERL Forum Seminar scheduled for October 22-23, 2015.

7. Wage and Hour Administration Liaison Subcommittee – Joseph Santoro/David Spalter: No report

8. Membership Outreach Subcommittee – Leslie Reicin Stein/Lindsay Wagner: Lindsay Wagner reported that the subcommittee was continuing its work on toolkits.

9. The Florida Bar Outreach Subcommittee – Sherril Colombo/Marlene Quintana: The reciprocity issue is being discussed and debated. There is also a proposed rule amendment that is expected to be approved by the Supreme Court, to include a technology component in required CLE credits.

**B. Long Range Planning Committee** – Hon. Alan O. Forst/Hon. Robert Kilbride: List serve is going well. Appreciative of the hard work of those who have helped with the list serve, Stephanie Ray and Brian Lerner. We have not had a long range planning retreat in several years and are planning one for this year.

### **C. Communications Committee**

1. Publications Subcommittee – Jay Lechner/Rob Eschenfelder: The committee submitted a written report. The committee is working on the next Checkoff and will have monthly e-alerts.

2. Website Subcommittee – Hon. Stephanie W. Ray/Brian Lerner: The committee is working hard to keep the website updated with the Section's activities and also by communicating e-blasts to the membership. One of the priorities this year is to enhance member benefits even further with website and technology. Chair Frank Brown noted that technology and website will be a focus during the long range planning retreat.

3. Social Media/Advertising Subcommittee – Cathleen Scott/Brian Lerner: Cathleen requested that those interested in advertising let her know.

**D. Special Projects Committee**

1. Certification Standards Review Subcommittee – Sherril M. Colombo/Frank Brown: The issues brought up in the survey are being looked at. Marlene Quintana, Leslie Langbein, Kristen Foslid, David Adams, Greg Hearing and Zascha Abbott expressed an interest in participating in this subcommittee.

2. FLSA Procedures Subcommittee – Shane Munoz: The e-mail has gone out. Surveyed what judges are already doing and come up with best practices and as with last year providing them with opportunity to use our work product if they want to, which over time will help with consistency from judge to judge on how these cases are handled.

**CLE – Cathleen Scott:**

The following seminars are planned:

41<sup>st</sup> Annual Public Employment Labor Relations Forum, October 22-23, 2015  
16<sup>th</sup> Annual Labor & Employment Law Update & Certification Review, January 28-29, 2016  
Practice Before State Labor & Employment Law Agencies, April 1, 2016

Webinar series for the year has been planned.

**IV. New Business**

**A. Advanced Labor Topics**

We will vote via e-mail to determine the preferred location for Advanced Labor.

**B. Presidential Showcase**

Cathleen is going to look into submitting a proposal together with another section such as the Business Law Section.

**C. Long Range Planning Retreat**

The Executive Council approved unanimously a motion by Leslie Langbein, seconded by Sherril Colombo, to hold a retreat this year. We will vote via e-mail to determine whether to have the long range planning retreat together with the Certification Review Course, on Saturday, or as a stand-alone retreat.

**D. Section Liaisons**

Frank Brown discussed his appointment of Executive Council members to serve as liaisons from the Section to other bar organizations that might be of common interest to members. In addition to those individuals already selected to serve, the following individuals agreed to serve at the meeting:

Administrative Law Section – Robert Kilbride

Business Law Section – Kristen Manor

City, County, and Local Government Section – Rob Eschenfelder

Health Law Section - Alan Gerlach

Young Lawyers Section – Lindsey Wagner

Workers Compensation – Hon. Stephanie Ray

The Florida Bar Leadership Outreach Committee will oversee the Liaisons.

**V. Attendance**

**Officers/Executive Council/ Co-Chairs**

Hon. Frank E. Brown  
Leslie W. Langbein  
Zascha Blanco Abbott  
Cathleen Scott  
David W. Adams  
Sherril M. Colombo  
Hon. Alan O. Forst  
Kristen Foslid  
Jennifer Fowler-Hermes  
Jay P. Lechner

**Via Conference Call**

Shane T. Munoz (immediate past chair)  
David E. Block  
Cheyanne Costilla  
Robert Eschenfelder  
Karen Evans  
Robyn Hankins  
Greg A. Hearing  
Hon. Robert L. Kilbride  
F. Damon Kitchen  
Patrick Martin  
Stephen A. Meck  
Gregg R. Morton  
Freddy Perrera  
J. Ray Poole, Jr.  
Hon. Stephanie W. Ray  
Erika Deutsch Rotbart  
Cynthia N. Sass  
Leslie Reicin Stein  
Robert S. Turk  
Cristina Velez

**Members/Guests**

Kristen Allman  
Grant Alley  
Yvette Everhardt  
Amanda Neff

**Excused**

Brian Lerner  
Jonathan Oliff





## Labor & Employment Law Section

2015 – 2016

### SEPTEMBER 2015 Section – Financial Statement

<b>Beginning Fiscal Year Fund Balance</b>	<b>\$197,956</b>
Total Revenue	\$90,038
Total Expenses	(\$44,840)
Net Operations	\$45,198
<b>Ending Fiscal Year Fund Balance</b>	<b>\$243,154*</b>

*\*see attached statement of operations*

### Current Membership

Current Membership	2,062
--------------------	-------

	September 2015 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Total Labor & Employment Law =====				
31431 Sect Dues	1,360	78,960	77,600	101.75
31432 Affil Dues	0	900	820	109.76
-----				
Total Dues Income Net	1,360	79,860	78,420	101.84
-----				
32010 Legal Span On-line	293	878	900	97.56
32191 CLE Committee Course	8,794	18,980	30,000	63.27
32205 Compact Disc	0	0	1,000	0.00
32293 NonSect Mem Cost Dif	940	1,280	7,000	18.29
35201 Sponsorships	0	0	2,500	0.00
37991 Advertising Revenue	0	350	3,000	11.67
38499 Investment Alloc	-5,778	-11,310	5,367	-210.73
-----				
Other Income	4,249	10,178	49,767	20.45
-----				
<b>Total Revenues</b>	<b>5,609</b>	<b>90,038</b>	<b>128,187</b>	<b>70.24</b>
-----				
36998 Credit Card Fees	5	13	40	32.50
51101 Employee Travel	400	400	3,854	10.38
71001 Phone/Direct	80	166	1,100	15.09
71005 Internet Charges	80	166	550	30.18
75401 Express Mail	0	0	11	0.00
84001 Postage	50	1,367	600	227.83
84002 Printing	2	730	500	146.00
84006 Newsletter	135	1,080	4,000	27.00
84007 Membership	0	0	100	0.00
84009 Supplies	36	36	300	12.00
84010 Photocopying	83	94	275	34.18
84051 Officers Travel Exp	0	0	250	0.00
84052 Mtg Travel Exp	449	4,234	22,500	18.82
84053 Out Of State Travel	0	0	1,000	0.00
84054 CLE Speaker Exp	0	0	10,000	0.00
84061 Reception	0	0	10,500	0.00
84069 Dinners	0	0	5,000	0.00
84101 Committee Exp	0	0	150	0.00
84103 Cert Committee Exp	136	-164	1,850	-8.86
84201 Board Or Council Mtg	35	37	5,600	0.66
84202 Annual Mtg	0	0	10,000	0.00
84205 Section Service Prog	57	-55	5,500	-1.00
84214 Long Range Planning	0	0	4,000	0.00
84301 Awards	0	0	7,000	0.00
84302 Scholarships	0	0	11,000	0.00
84422 Website	1,035	1,538	3,200	48.06
84535 Chairs Conv	0	0	400	0.00
84701 Council Of Sections	0	0	300	0.00
84998 Operating Reserve	0	0	11,582	0.00
84999 Miscellaneous	0	250	500	50.00
88252 Course Credit Fee	0	0	150	0.00

	September 2015 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Total Labor & Employment Law =====				
Total Operating Expenses	2,583	9,892	121,812	8.12
31433 Section Mgmt Fee	578	34,948	34,650	100.86
86431 Mtgs Admin	0	0	1,254	0.00
86543 Graphics & Art	0	0	4,375	0.00
Total TFB Support Services	578	34,948	40,279	86.76
<b>Total Expenses</b>	3,161	<b>44,840</b>	162,091	27.66
Net Operations	2,448	45,198	-33,904	-133.31
<b>21001 Fund Balance</b>	0	<b>197,956</b>	178,905	110.65
<b>Total Current Fund Balance</b>	2,448	<b>243,154</b>	145,001	167.69

\* \* \* \* \* End of listing \* \* \* \* \*

	September 2015 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Total Labor/Emp Out of State =====				
Total Dues Income Net	0	0	0	*
32010 Legal Span On-line	293	878	900	97.56
32205 Compact Disc	0	0	1,000	0.00
Other Income	293	878	1,900	46.21
Total Revenues	293	878	1,900	46.21
36998 Credit Card Fees	0	0	25	0.00
75401 Express Mail	0	0	11	0.00
Total Operating Expenses	0	0	36	0.00
Total TFB Support Services	0	0	0	*
Total Expenses	0	0	36	0.00
Net Operations	293	878	1,864	47.10
Total Current Fund Balance	293	878	1,864	47.10

	September 2015 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
C1693 2014 Adv Labor Topcs ~~~~~				
Total Dues Income Net	0	0	0	*
32010 Legal Span On-line	293	878	0	*
Other Income	293	878	0	*
Total Revenues	293	878	0	*
Total Operating Expenses	0	0	0	*
Total TFB Support Services	0	0	0	*
Total Expenses	0	0	0	*
Net Operations	293	878	0	*
Total Current Fund Balance	293	878	0	*

<b>Labor and Employment Law Section</b>	<b>13-14 Actual</b>	<b>14-15 Actual</b>	<b>15-16 Budget</b>	<b>15-16 Projected Actual</b>	<b>16-17 Proposed Budget</b>
<b>Labor Total Revenue</b>	<b>84,904</b>	<b>93,252</b>	<b>91,637</b>	<b>105,029</b>	<b>105,319</b>
Dues	43,980	44,896	43,770	45,140	45,140
31431 Dues	77,440	78,840	77,600	79,200	79,200
31432 Affiliate Dues	760	900	820	940	940
31433 Dues-Retained TFB Ge	-34,220	-34,844	-34,650	-35,000	-35,000
Revenue	40,924	48,356	47,867	59,889	60,179
31435 Admin Fee Adj	0	0	0	0	0
32001 Registrations	0	0	0	0	0
32010 Legal Span On-line	0	998	0	900	900
32191 CLE Courses	16,238	43,605	30,000	43,000	4,300
32293 Section Differential	3,400	3,700	7,000	4,500	4,500
32301 Course Materials	0	0	0	1000	1000
35001 Registrations	0	0	0	0	0
35201 Sponsorships	0	0	2,500	2,500	2,500
35603 Bd/Council Mtg Regis	0	0	0	0	0
35700 Member Service Progr	0	0	0	0	0
37991 Advertising Revenue	0	700	3,000	2,050	2,050
38499 Investment Allocatio	21,286	-647	5,367	5,939	6,229
39999 Miscellaneous	0	0	0	0	0
<b>Labor Total Expense</b>	<b>99,360</b>	<b>95,553</b>	<b>127,405</b>	<b>97,247</b>	<b>123,294</b>
Staff & Office Expense	936	1095	1,650	1,650	1,650
61201 Equipment Rental	0	0	0	0	0
71001 Telephone/Direct	936	723	1,100	1,100	1,100
71005 Internet Charges	0	372	550	550	550
Travel	3,862	3,806	3,854	3,860	3,970
Other Expense	86,471	83,533	116,272	91,737	117,674
36998 Credit Card Fees	10	33	15	15	15
84001 Postage	567	588	600	1367	1000
84002 Printing	425	407	500	730	750
84006 Newsletter	3,509	2,894	4,000	3,000	4,000
84007 Membership	0	0	100	50	50
84009 Supplies	197	311	300	300	300
84010 Photocopying	272	476	275	275	300
84051 Officers Travel Expe	250	0	250	250	250
84052 Meeting Travel Expen	25,021	21,708	22,500	22,500	22,500
84053 Out Of State Travel	0	0	1,000	0	1,000
84054 CLE Speaker Expense	0	521	10,000	600	10,000
84061 Reception	5,000	10,623	10,500	10,500	10,500

84069 Dinners	7,296	3,216	5,000	5,000	5,000
84101 Committee Expenses	0	63	150	150	150
84103 Cert Committee Exp	1,858	2,445	1,850	1,850	2,000
84201 Board Or Council Mee	5,999	4,810	5,600	5,600	5,600
84202 Annual Meeting	10,240	9,861	10,000	10,000	10,000
84204 Midyear Meeting	0	0	0	0	0
84205 Section Service Prog	5,751	1,986	5,500	2,000	5,500
84209 Retreat	0	0	0	0	0
84214 Long Range Planning	0	0	4,000	4000	4,000
84276 Sect Membership Dire	0	0	0	0	0
84280 Gvmnt Lawyer Discnt	0	0	0	0	0
84301 Awards	5,662	6,708	7,000	7,000	7,000
84302 Scholarships	11,000	12,000	11,000	12,000	12,000
84422 Website	3,114	4,010	3,200	3,200	3,200
84531 Tulane Speakers Exp	0	0	0	0	0
84534 Tulane Conference	0	0	0	0	0
84535 Chairs Convention	0	443	400	400	400
84701 Council Of Sections	300	300	300	300	300
84998 Operating Reserve	0	0	11,582	0	11,209
84999 Miscellaneous	0	78	500	500	500
88241 Outline Prt-Inhouse	0	52	0	0	0
88252 Course Credit Fee	0	0	150	150	150
88265 Refreshment Breaks	0	0	0	0	0
Admin & Internal Svcs	8,091	7,119	5,629	0	0
86344 Mailing Overhead	0	0	0	0	0
86431 Meetings Administrat	3,730	931	1,254	0	0
86543 Graphics & Art	4,361	6,188	4,375	0	0
Beginning Fund Balance	216,265	189,155	178,905	197,956	207,638
Net Operations	-14,456	-2,301	-35,768	7,782	-17,975
Net Operations (from other centers)	-12,662	11,100	1864	1,900	0
Ending Fund Balance	189,147	197,954	145,001	207,638	189,664

## **Law School Liaison Committee Meeting Minutes October 15, 2015**

Attendants (by conference call): Co-Chairs Freddy Perera and Cristina Velez.  
Committee members Sergio Casiano, Chuck Eiss, Tasha Hines, Daniel Seltzer, Melanie Leitman, Chris Shulman, Phyllis Towzey, and Grissel Seijo.

Freddy took roll, and then Cristina and Freddy provided an overview of the scholarship award process and divided up schools.

### Allocation of Schools

Ave Maria	Sergio Casiano
Barry University	Grissel Seijo
FAMU	Cristina Velez*
Florida Coastal	Tasha Hines
Florida International	
FSU	Melanie Leitman
Nova Southeastern	Freddy Perera
Stetson University	Chris Shulman
St. Thomas	
Thomas M. Cooley	
UF	Phyllis Towzey
University of of Miami	Chuck Eiss

An email will be distributed to all committee members to see if any of those who could not participate in the conference call are willing take a school that does not have an assigned liaison. (Please note: If someone would like to take FAMU Cristina is willing to switch to another school). If there are no additional volunteers some liaisons will take on a second school.

Members were advised that a template letter and further information for the schools will be provided in the next couple of weeks. Edits, if any, should then be submitted by committee members. It was explained that the school itself picks its scholarship recipient and that each liaison would prepare a short biography of their recipient for *The Checkoff*. Committee members were also encouraged to meet with their school's recipient.

Freddy then explained the committee's roll in the Section's Hall of Fame, clarifying that the nominee did not have to be a Florida law school graduate.

Phyllis proposed reaching out to law schools to offer ourselves as speakers. Chuck Eiss concurred and the two agreed to move the idea forward. They will reach out to their respective schools and report on their progress at the next meeting.

The meeting was then adjourned.



## **JUDICIAL OUTREACH COMMITTEE**

The Judicial Outreach Committee held its first telephone conference with its members on Monday, October 12, 2015. The purpose of the call was to introduce ourselves to the new members of the committee as well as discuss judicial presentations this coming year. During the conference call it was discussed that one of circuits that we have not yet presented to are the judges in Broward County Florida. Ms. Avalos, who attended the conference call, being a former County Court judge, volunteered to reach out to her contacts in the Broward County Courthouse, more specifically the Chief Judge, to see what arrangements could be made for this committee to make a presentation to the judges in the 17th judicial circuit.

Zascha Blanco Abbott

## JOURNAL REPORT

Chairman Brown,

In advance of the upcoming October 22<sup>nd</sup> 2015 Executive Council meeting, please accept this as my report of the Bar Journal Articles committee to the Executive Council:

- In the **April** Journal, the Section published its first 2015 article by Lori Mans and Evan Gibbs of the recent NLRB decision concerning unionization of student athletes.
- Our second article of 2015 appeared in the **May** Journal, featuring an article by Laura Mall on the 2014 Murphy Oil NLRB decision, impacting class and collective action waivers.
- Part I of Author Sacha Dyson's article on judicial estoppel has been published in the **June** Journal.
- Part II of Ms. Dyson's judicial estoppel article was published in the **July/August** Journal.
- Author Carlo Marichal's article concerning the Private Sector Florida Whistleblower's Act was published in the **September/October** Journal issue.
- Author Nicole Dunlap's article on Pregnancy Discrimination Act cases after the *Young v. United Parcel Service* decision is scheduled to appear in the **November** Journal issue.
- Author Lindsay Dunn's article concerning the Florida Public Whistleblower Act and recent related cases interpreting the First Amendment's coverage of "whistleblowing" type acts in the public employment workplace will appear in the **December** Journal.

## 2016

- The article by authors Greg Hearing and Jeff Patenaude addressing technology's impact on the practice of labor & employment law will be published in the Bar's **January** "special technology issue".
- Authors David Kalteux and Shane Munoz continue to work on an article on the EEOC's recent interpretation concerning discrimination based on LGBT status as constituting gender discrimination under Title VII. Expected delivery date for editing of this article is November, with hopeful publication in the **February** 2016 issue.

- Author Lowell Walters continues to draft an article addressing the new EEOC regulation prohibiting employer health plans from adopting tiers based on health outcomes as they would be “discriminatory” against disabled persons under Title I of the ADA. This article is targeted for Bar’s “special health and wellness” Journal issue in **March** of 2016.
- Author Sharon Wey has begun drafting an article addressing the recent initiative by OSHA to expand its enforcement activities and focus on workplace violence and other safety and health risks in the healthcare industry. This article is targeted for the **April** 2016 Journal issue.
- Authors Anne Chapman and Mike Magidson have begun drafting an interesting article addressing the current state of non-compete law as it relates to referral relationships and whether referral relationships can constitute a legitimate business interest for purposes of non-compete protection. This article is targeted for **May** 2016 Journal issue.

As the Council knows, I always like to have authors working on articles for the future, so please continue to refer authors with quality topics to me. I remain very grateful to our authors for their hard work and to the firms supporting their efforts to cause our Section to be active on the scholarly publication front.

This concludes my report to you and the Executive Council. Please let me know if you have any questions prior to the meeting.

Respectfully submitted,  
Robert Eschenfelder  
Section Journal Articles Editor

**Labor and Employment Law Section  
Website Subcommittee Report  
October 15, 2015  
Submitted by Co-Chairs: Brian Lerner and Judge Stephanie Ray**

**New Developments on Website:**

- LEst Serv (L&E List Serv)
  - Lest Serv is active and continues to run smoothly. Resource is publicized on the website and promoted through EBlasts and Social Media.
  - Currently, there are 143 members signed up (22 have joined since the last report on 6/11/15). Most have chosen to receive any posts as they occur, as compared to receiving posts in a one-time e-mail digest format (87 v. 56).
  - There have been approximately 20 items posted (with each receiving responses).
  - All members are encouraged to join.
- Website updates
  - Section Events, EC Meeting Materials, CLEs, and Publications regularly updated.
  - Membership Directory updated.
- E-Blasts regularly issued
- Website Data (from last report dated since the last report on 6/11/15):
  - 3,323 sessions with 2,343 being new visitors and 981 being return visitors.
  - The average person views the site for 1 minute, 28 seconds (same from last report)
  - Most popular age range: 25-34 (33.5%); 18-24 (27.5%); 35-44 (15.5%) (same from last report)
  - Males visit more than females (over 54%) (same from last report)
  - The most popular pages viewed are CLE/Section events and then publications (same from last report)
  - 77.8% come from desktop computers (whether Windows or Mac), 13.6% come from mobile devices (iOS/Android), and 8.55% come from tablets (iPad, Samsung Galaxy).

**Reminder to Executive Council:** As a benefit to Section members, the website features a searchable member directory which allows users to search for members by name, county, area of practice, law school or board certification. Members are encouraged to update and personalize their member page by adding a photo, practice area, law school, board certification, and links to publications. To log in for the first time to update your profile, click Member Login at the top right corner of the home page. Click the link that reads “Forgot your password? First time logging in? Click this link.” That link will provide instructions on how to obtain your password so that you can log in to the website and update your profile.

**Labor and Employment Law Section  
Social Media/Advertising Subcommittee Report  
October 15, 2015**

**Submitted by Co-Chairs: Cathleen Scott and Brian Lerner**

- Facebook Page
  - 104 likes (up 17 since last report on 5/26/15)
  - Page continues to be updated with CLEs, meetings, and other news and notes (10 items added since last report on 5/26/15)
- LinkedIn Page
  - 500 members (added 18 members since last report on 5/26/15)
  - Page continues to be updated with CLEs, meetings, and other news and notes (11 items added since last report on 5/26/15)

**Reminder to Executive Council:** Be sure to join the Facebook and LinkedIn pages, and let others know about liking the Facebook page and joining the LinkedIn page.

## **Analysis of 2014 Labor & Employment Law Section Survey on Board Certification<sup>1</sup>**

### **Executive Summary**

In 2014, the Section submitted a survey on Labor & Employment Law Board Certification Based to the Section membership. We received 140 surveys by the response deadline (about 7% response rate, which according to the Bar is typical). Based on the results of the survey of Section members, a large majority of respondents believe that the Board Certification requirements need to be modified to accurately reflect how labor and employment attorneys practice today. An overwhelming amount of the commentary focused on what types of work experience may be credited. For example, respondents commented that time spent preparing for depositions, hearings and appeals were not considered credible time, but should be. Respondents also explained that many labor and employment attorneys spend a significant amount of time counseling clients by providing advice on policies (both drafting and implementing), drafting and implementing employee handbooks, advising on hiring and firing, drafting, reviewing and negotiating employment agreements and general employment advice. Agency representation that did not involve mediation or in-person meetings (such as preparing a charge or a response) should be credited. Finally, the definition of “primary attorney” was challenged by many practitioners that stated that most litigation is litigated by teams of attorneys rather than a single attorney. All attorneys who substantively work on matters should receive the appropriate credit for their work.

Several respondents warned that quantifying some of the experience may be difficult, but that regardless of the difficulty, the certification process should be changed. Many suggesting using alternative calculations which focus on hours billed to a clients on substantive matters or allotting points to certain activities such as facilitating a CLE seminar, preparing for depositions or drafting appellate briefs.

Quite a few respondents commented positively that the survey is a good first step and that the modification should be completed.

If the Executive Council wishes to make any recommendations for change consistent with the survey results, they should start with consideration of what types of work should “count” for the 30-day experience requirement. The current rule focuses not only overwhelmingly on litigation that culminates in trial or appellate proceedings, but counts solely “in-person” adversarial events.

We note that the Labor and Employment Certification Committee has responded to the survey at the urging of the Section with some changes that expand and clarify their policies. However, a number of tasks remain ineligible for credit. These include attendance at scheduling and status conferences, defending depositions, preparation of pleadings, preparation of written discovery, and preparation of motions, memoranda, briefs and position statements.

---

<sup>1</sup> The Executive Council wishes to thank Grissel Seijo of Littler Mendelson for her work compiling this summary.

### Current Regulation

Currently, attorneys must comply with Rule 6-23.3(c) to be considered for certification or comply with Rule 6-23.4 to be considered for recertification. The respondents overwhelmingly agreed that the experience requirements are a significant deterrent to the certification process.

For many, the current regulation is too litigation focused and not reflective of the breadth of experience that labor and employment attorneys possess. One commented that certification process should include separate certification processes for traditional labor practitioners and traditional employment attorneys.

Pursuant to Rule 6-23.3(c) of the Rules Regulating the Florida Bar:

The applicant shall have a total of **30 days** acting as **primary** attorney, judge, hearing officer, arbitrator, or mediator in **litigation** and/or administrative **proceedings** concerning labor and employment law issues, including but not limited to evidentiary hearings, arbitrations, collective bargaining, representing clients in relation to governmental agencies, mediations, court hearings, taking depositions, and oral arguments. Any such proceeding lasting **less than 8 hours, but more than 5 hours**, shall be credited a full day. Any such proceeding **lasting less than 4 hours**, but more than 1 hour, shall be credited a half day. This experience shall have been attained **within the 5 years immediately preceding** the filing of the application for certification.

In implementing this rule, the Committee has adopted the following policy 4.01(a) for initial certification:

The following activities are not accepted as part of the 30 day experience requirement: attendance at pre-trial conferences, attendance at scheduling and status conference, defending depositions, preparation of pleading, preparation of written discovery, preparation of briefs and position statements, and participation in investigations by administrative agencies.

The rule and policy for recertification are similar.

## Survey Results

Question	Percentage of Responses	Insights
<p><b>1. Are you in favor of changing the current experience requirements for Board Certification, as expressed in Rule 6-23.3(c)?</b></p>	<p>Yes: 69 No: 29</p> <p>By a 2:1 majority, the respondents are in favor of changing the current experience requirements.</p>	<p>The majority of respondents suggest that the experiences needed for Board Certification and the experiences needed to be an effective labor and employment attorney are not fully aligned. As such, most respondents favor changing the current requirements.</p>
<p><b>2. Are you in favor of modifying the existing experience requirements for Board Certification, as expressed in Rule 6-23.3(c), or are you in favor of providing an alternative in addition to the current experience requirements?</b></p>	<p>Alternative: 29 Modification: 23 Both: 48 Neither: 9</p> <p>Approximately three-quarters of the respondents are in favor of either providing an alternative or modifying the current requirements.</p>	<p>Regardless of whether the existing experience requirements are altered or modified, the overwhelming majority of respondents expressed the opinion that the Board Certification process should change.</p>



Question	Percentage of Responses	Insights
<p><b>3. If in favor of modifying the existing experience requirements, would you reduce the 30-day category?</b></p>	<p>Yes: 46 No: 39 Not Sure: 15</p> <p>If the respondents who provided an actual suggested changed time frame, the following were the responses/:</p> <p>Change it to 20 days: 7 Change it to 15 days: 4 Change it to 10 days: 3</p> <p>This question was the most controversial question of the survey because many who wish to see the time frame change also argue that the definition of “experience” should be altered.</p>	<p>For several respondents, the 30-day requirement is not the problem with the Board Certification experience standards. Rather, it is how “experience” is defined. These respondents argue that a current L&amp;E practitioner will not litigate matters through trial or administrative hearings. This lack of trial experience, however, should not translate to lack of expertise in labor and employment issues.</p> <p>Even current Board Certified attorneys explained that they are afraid that they will not qualify for re-certification because the experience does not provide credit for going in-house, counseling or hours spent preparing for hearings and trial proceedings that never occur because the case settles.</p> <p>The following are suggestions from the respondents:</p> <p><i>Consider that employment attorneys do not go to trial and that the “experience” as defined does not take into account the extensive counseling aspect of the practice.</i></p> <p><i>The 30 day requirement is impossible for in-house counsel that have the skills to be an expert, but will, at best, manage outside counsel rather than litigate the matter themselves.</i></p> <p><i>For many, court hearings and for appellate proceedings in Florida are limited time frames (15 minutes at best). The time preparing for a hearing, preparing a witness or even an appellate brief is much more extensive than the 15 minute credit that is received for the actual hearing or oral argument.</i></p>

Question	Percentage of Responses	Insights
<p><b>3. If in favor of modifying the existing experience requirements, would you reduce the 30-day category?</b></p>		<p><i>Many employment disputes are resolved through informal negotiations and as such those attorneys will not receive the proper credit for their experience.</i></p> <p><i>For attorneys responding to EEOC or FCHR claims, there is no credit for investigating the complaint, getting affidavits, or arguing the law in a Position Statement.</i></p> <p><i>The valuable counseling experiencing is not accounted for such as handbook preparation and review, employment law training and employment contract drafting and review.</i></p> <p><i>Credit for counseling time is critical.</i></p> <p><i>The Committee should consider time as in billed time that actually takes into consideration how a current L&amp;E attorney practices.</i></p> <p><i>The rate of settlement, mediations and rate of drafting substantive dispositive motions (like a motion for summary judgment) should be considered as experience.</i></p> <p><i>Credit hours worked on actual labor and employment matters as billed to clients versus time spent in proceedings.</i></p> <p><i>“You handle some minor motion to compel in state court, it takes little if any prep, if the hearing is 1/2 hour you get credit for a half day. But, if you handle a complex employment appeal, put hundreds of hours of complex work, you get no credit because you’re probably not doing to get oral argument and if you do it will be 15 minutes.”</i></p>

Question	Percentage of Responses	Insights
<p><b>3. If in favor of modifying the existing experience requirements, would you reduce the 30-day category?</b></p>		<p><i>Perhaps creating a point system that depends on the activity may be more helpful such as one you mediate 5x, you are allotted X points.</i></p> <p><i>Time spent before “in court” time such as depositions should be credited.</i></p> <p><i>The preparation time and rate of mediation and settlement should be credited.</i></p> <p><i>The actual hours spent in preparation for hearings, appeals, or depositions should be considered.</i></p> <p><i>In large firms or in-house situations, attorneys will spend substantive time on the preparation time (ie deposition outlines, witness preparation), but will not receive hours credit for the work.</i></p> <p><i>The Committee should seek to value the skills needed by labor and employment attorneys in general, not just labor and employment trial litigators.</i></p>

Question	Percentage of Responses	Insights
<p><b>4. Several other Florida Bar certification areas, including Civil Trial, Workers' Compensation and Business Litigation, require applicants to have handled a specific minimum number of trials/business matters; however, they allow attendance and completion of an advance trial advocacy seminar as a substitute for a portion of the trial/business matters the applicant must have handled. Do you feel that an applicant's attendance and completion of an advanced trial advocacy seminar would be an acceptable substitute for any portion of the applicant's experience requirement?</b></p>	<p>Yes: 37  No: 47  Not sure: 16</p> <p>The majority of respondents do not agree that attending an advance trial seminar should be a substitution for real world labor and employment experience.</p>	<p>As noted, the majority of respondents believed that advanced trial seminars are not an advisable method to accurately capture the experience of a labor and employment attorney.</p> <p>Nevertheless, for the respondents that thought an advanced trial seminar could provide experience hours, the following is a summary of the responses.</p> <p><i>It may account for, at maximum, 50% of the required experience hours.</i></p> <p><i>The amount accredited should equal the actual amount attending (ie 1 day = 1 credited day).</i></p> <p><i>Certification experience is not in litigation alone for labor and employment attorneys, therefore time writing article or teaching classes or facilitating workshops should also be accredited.</i></p> <p>Respondents opposing the substitution of an advance trial seminar with the actual experience of trial, generally argued that real world experience cannot and should not be compared to a workshop or advanced seminar experience.</p>

Question	Percentage of Responses	Insights
<p><b>5. The International Law certification area permits time devoted to lecturing on or writing about international law to count toward the satisfaction of its experience requirements. Should time expended by an applicant speaking or writing on labor and employment matters be counted toward satisfaction of the 30-day primary attorney experience requirement?</b></p>	<p>Yes: 53 No: 40 Not sure: 7</p>	<p>The majority of the respondents held that quantifying the amount of time for writing or speaking experience is difficult. One repeatedly suggested solution is to credit the same amount of time that a CLE committee would credit to the certification process.</p> <p>Other suggestions included:</p> <p><i>A person should receive 25%-33% credit for writing and lecturing time.</i></p> <p><i>Maximum credit should be:</i></p> <ul style="list-style-type: none"> <li><i>3 days</i></li> <li><i>Up to 15 days</i></li> <li><i>Up to 10 days</i></li> <li><i>Up to half.</i></li> </ul> <p><i>Provide credit for “publishing x number of articles a year” will account for y credits.”</i></p> <p><i>Crediting or quantifying the amount of time lecturing and writing is very difficult. Perhaps using a “word count to qualify as certain amount of “days.”</i></p> <p><i>One day for each lecture and three days for each published article.</i></p> <p><i>Speaking and or writing opportunity should satisfy one (1) day of the 30-day requirement.</i></p> <p><i>Researching, writing and editing a scholarly article is certainly equivalent to the amount of time spent (and level of knowledge gained) preparing for and attending a day-long evidentiary hearing.</i></p>

Question	Percentage of Responses	Insights
<p><b>6. Should the term “primary attorney” be changed to “attorney of record” or “involved attorney” in order to include other attorneys besides lead counsel?</b></p>	<p>Yes: 65 No: 23 Not sure: 12</p> <p>Two-thirds of the respondents that the “primary attorney” requirement should be changed.</p>	<p>Respondents were very sensitive to active participation or a significant role in litigation as a proper measure for the certification process.</p> <p><i>By changing the title of “primary attorney” it allows attorneys at larger firms who may not be lead attorneys until nearly 10 years into their careers to gain credit toward the experience. For instance, a young attorney may be very involved in preparing the case for deposition, writing dispositive motions, fact investigation, and the “lead attorney” is the one who goes to the hearing, conducts the depositions, etc. The ‘behind the scenes’ work is VERY important in employment law.</i></p> <p><i>Often, in-house counsel handles all cases and matters so intimately while overseeing the work or outside counsel but receive no credit for any of the work. They often provide all the information, details, facts, analysis and suggest corrections and changes and reviews all documents and responses. They sit in on all hearings and proceedings providing assistance to outside counsel while not acting as counsel. This should be taken into consideration and depth of work counted.</i></p> <p><i>This worries me a little because we want our Board Certified folks to be qualified and the ones in charge . . . . at some level.</i></p> <p><i>Very common for firms to use a partner as the attorney of record even where an associate takes the lead on the case. The attorney taking the more active involvement should get the credit.</i></p> <p><i>Too many litigators think that they are labor and employment attorneys because they may have tried a case or two, and they would be primary attorney.</i></p>

Question	Percentage of Responses	Insights
<p><b>7. Would you enlarge the five year period for establishing 30 days of primary attorney experience?</b></p>	<p>Yes: 32            No: 50            Not sure: 18</p> <p>The majority of the respondents do not want to see the expansion of the 5 year time frame to gather sufficient experience for certification. Rather, they commented that the certification process should be more skills-based rather than litigation-based which would obviate the need for additional time.</p> <p>Of those respondents who would change it, the following are the responses for increasing the time frame.</p> <p>Change to 7 years 3            Change to 10 years 3            Change to 8 years 2</p>	<p>Changing the definition of the experience needed for certification would eliminate the need to change the time frame by which an attorney may gather sufficient experience to qualify for the certification.</p> <p>For those that advocated for an enlargement of time for establishing the 30 days of primary attorney experience, the respondents focused on the need for an expanded time because certification experience as currently quantified is litigation based, but cases currently rarely see a court room.</p> <p><i>Since many cases settle early in the litigation, even before depositions, that a longer time period would make sense.</i></p> <p><i>More senior attorneys have the experience but may be more involved in rainmaking or counseling clients later in their careers.</i></p> <p><i>These cases rarely see a court room so counting just depo time and similar time can take a while to add up, especially when an attorney does litigation other than just employment law.</i></p> <p><i>Nearness in time of experience is important. How things were done 10 years ago are less relevant to current competence.</i></p>

Question	Percentage of Responses	Insights
<p><b>8. Would you eliminate any specifically enumerated experiential requirements (i.e. handling evidentiary hearings, arbitrations, collective bargaining, representing clients in relation to governmental agencies, mediation, court hearings, taking depositions and oral arguments)?</b></p>	<p>Yes: 13  No: 71  Not sure: 16</p> <p>An overwhelming majority does not favor eliminating any specifically enumerated experiential requirements.</p>	<p>Respondents do not want a diminishing of experience requirements. Rather, respondents want the expansion of the experience categories to include the following experience:</p> <ul style="list-style-type: none"> <li>* actions involving administrative agencies</li> <li>* mediations</li> <li>* preparation for deposition</li> <li>* counseling services</li> <li>* teaching</li> <li>* speaking engagements</li> <li>* writing</li> </ul> <p>-----* actions involved in appellate proceedings</p> <p><i>All of those items should still count toward the experience requirement. However, representing clients in relation to governmental agencies could be better explained. For example, when I'm dealing with a DOL investigator or onsite EEOC investigation, would that count toward the experience?</i></p> <p><i>Collective bargaining, in Florida, I imagine not very common, I think the Bar should consider all the work employment attorneys, at least defense attorneys, spend consulting, teaching, and policy drafting.</i></p> <p><i>In addition, how can you equate a mediation with an evidentiary hearing or appellate argument that may have required hundreds of hours to prepare for? But that's what the rule does.</i></p> <p><i>I would add additional tasks, such as defending 30(b)(6) depositions and drafting summary judgment motions.</i></p> <p><i>I would eliminate collective bargaining because this type of experience is not as frequent as the other experiential requirements.</i></p>



Question	Percentage of Responses	Insights
		<p><i>I would not include mediations as this task is really more about bargaining than display of expertise. The very process provides that the mediator makes no decisions or judgment based on what is said, and often mediations are taken up with just sitting there, not even saying anything. Even though I engage in collective bargaining meetings, again this really is much less the practice of law and much more the making of business decisions. Is it more valuable as a means of judgment certification credentials to “experience” 8 hours of being in a bargaining session, vs. 3 hours crafting, as an attorney, a proposed contract term? Seems to give more credit to going to a meeting than in drafting a contract term.</i></p> <p><i>Need to better account for the non “proceedings” experience.</i></p> <p><i>No, but I would recommend opening the requirements to handling L&amp;E matters as primary attorney to conclusion so that if case is dismissed or settled the attorney gets some time credit.</i></p> <p><i>The majority of employment lawyers don’t handle collective bargaining, and some avoid government representations as well. Forcing people to engage such activities doesn’t seem productive.</i></p>

Question	Percentage of Responses	Insights
<p><b>9. If you are in favor of implementing an alternative to the current experience criteria for individuals who for whatever reason, are not able to achieve Board Certification under the existing experiential requirements, would you:</b></p>	<p><b>60%</b> favor demonstration of the requisite experience based on the completion of a questionnaire approved by the Board of Legal Specialization &amp; Education and the Labor and Employment Law Section, as well written or oral supplementation, as deemed needed.</p> <p><b>52%</b> favor demonstration of the requisite experience based on upon (1) attending CLE seminars related to labor and employment law; (2) lecturing at and/or serving on steering committees for CLE seminars based on labor and employment law; (3) authoring articles or books on labor and employment law published in professional periodicals or publications.</p> <p>43% favor the applicant submitting a sworn affidavit detailing the reasons why he/she possesses the requisite experience to be deemed eligible for Board Certification in Labor and Employment Law by the Board of Legal Specialization &amp; Education and the Labor and Employment Law Section.</p>	<p>Respondents' responses vary vastly to this question. Participants focused on the how teaching or publishing differ from litigating a matter. Additionally, they commented on how essays are more indicative of knowledge than other types of questions.</p> <p><i>I would also get rid of the short answer and multiple choice questions on the examination and require essays showing one's comprehension of the issues involved, depth and breath of knowledge, and analytic skills. There should also be an interview process in addition to the written examination.</i></p> <p><i>Anything is better than the current biased requirements, requirements that do a disservice to our clients by requiring and thus encouraging litigation.</i></p> <p><i>Because so much of labor and employment practice is based on the written word, I think it would be positive to include written submissions I the 30 day requirement. For example, every 10 pages of a summary judgment or response could count for "1 day" of experience.</i></p> <p><i>For the second option, I am in favor of the completion of a home study program, provided that there is a some way to measure whether the candidate actually successfully completed the program.</i></p> <p><i>I believe teaching a law course on L&amp;E should be counted as well as authoring a book, but not for attending CLE, lecturing or home study.</i></p> <p><i>Perhaps a supporting affidavit from a Board Certified attorney who knows of the applicant's qualifications by virtue of working with the applicant as opposing or co-counsel, etc., show be allowed as well.</i></p>

Question	Percentage of Responses	Insights
		<p><i>Teaching a course should not be just limited to law school. Any academically certified undergraduate school should count. You are welcome to require a copy of the syllabus.</i></p> <p><i>I think saying “published in professional periodicals or publications” is too narrow. You’re limiting it to print, which is dying and will be extinct soon. I’d include any publication online, blogs, and other publications. As to books published in professional periodicals or publications, I don’t know what that means. Books are published by publishers. I’d include e-books as well, and I wouldn’t limit it to books put out by ABA or Florida Bar. As to lecturing, I don’t know why only teaching a law school course or CLE would count. What about CME or lecturing to community organizations? Don’t we want to encourage lawyers to go out into the public to educate?</i></p>

Question	Percentage of Responses	Insights
<p><b>10. Rule 6-23.4 of the Rules Regulating the Florida Bar requires a person seeking recertification of his/her Board Certification in Labor and Employment law to demonstrate “25 days of involvement of contested matters involving labor and employment law issues throughout the period since filing the last application for certification.” Assuming good cause is shown, would you be in favor of changing some or all of the “25 days of involvement requirement” for Board Certified labor and employment attorneys who have transitioned into in-house attorney and/or law professor positions? If so, how many days would you waive?</b></p>	<p>Yes: 68 No. 20 Not sure: 12</p> <p>Three times as many respondents think that recertification should be modified to include a good cause alternative for in-house attorneys and law professors.</p>	<p>Most respondents thought that the recertification days should be completely waived if there is proof that the person is substantially practicing in the area of labor and employment. Days that the respondents would waive vary from 5-25 days.</p> <p><i>All of it, if the person supervises other attorneys who practice in the area of labor and employment, or does counseling as opposed to litigation in the area of labor and employment.</i></p> <p><i>All of them in the cases of professors, judges or attorneys who provide services for the State substantially related to labor and employment law, but whom are not necessarily involved in contested matters.</i></p> <p><i>Consistent with any modifications to the experience requirement for initial certification.</i></p> <p><i>Depends on how “contested matters” is defined. If an attorney is in-house counsel providing advice to HR on day-to-day matters involving employee issues that arise that implicate FMLA, Title VII, ADA accommodation issues, policy development, etc. such experience should be given the same weight since such attorneys are actually “in the line of fire” applying the law as the matter unfolds.</i></p> <p><i>I’d waive it all for recertification. If someone is teaching or writing, then that should count. There shouldn’t need to be a “good cause shown.”</i></p> <p><i>If “days” of involvement are measure solely from a litigation standpoint, there should be other avenues available for re-certification for L&amp;E lawyers who don’t spend time on the litigation events that qualify for re-certification.</i></p>

Question	Percentage of Responses	Insights
<p><b>11. If you are in favor of modifying the experiential requirement for Board Certification other than the manners addressed above, what would you propose?</b></p>		<p>Respondents suggested the addition of various activities via which an attorney would receive experience credit.</p> <ul style="list-style-type: none"> <li>* negotiation</li> <li>* drafting</li> <li>* advising clients in contested matters</li> <li>* collective bargaining.</li> <li>* administrative proceedings</li> <li>* online publications</li> <li>* lecture credit</li> <li>* CLE facilitating</li> <li>* drafting policies</li> <li>* presenting seminar</li> <li>* facilitating trainings</li> <li>* counseling involving compliance</li> <li>*for in house counsel, demonstration that they are involved in experiential requirements, including monitoring or strategizing with primary outside counsel.</li> <li>* brief writing</li> <li>* credit for significant advocacy that does not necessarily involve time before a judge or mediator.</li> </ul> <p><i>Provide 3 “in box” exercises involving “real-life” client scenarios for a defense attorney, and 3 “in box” for a plaintiff’s attorney. Give them the fact pattern and ask them to give advice in writing how they would handle. I realize that attorneys can differ on approaches, but this allows us to test an attorney’s application of knowledge of the law to real life scenarios.</i></p> <p><i>“The biggest issue I have with the Board Certification is the % weighted toward traditional labor matters. Like most L&amp;E lawyers I know, I don’t have traditional labor.”</i></p> <p><i>Transactional experience in labor and employment law should be considered in certification.</i></p>

Question	Percentage of Responses	Insights						
<p><b>12. Are you currently, or have you ever been, Board Certified in Labor and Employment Law by the Florida Bar?</b></p>	<table border="0"> <tr> <td>Yes, currently</td> <td>23</td> </tr> <tr> <td>Yes, formerly</td> <td>2</td> </tr> <tr> <td>No, never</td> <td>75</td> </tr> </table> <p>The majority of the survey participants are not certified. They represent the target audience and likely the key reasons why the number of attorneys seeking certification has dwindled over the past decade.</p>	Yes, currently	23	Yes, formerly	2	No, never	75	<p>Respondents have not sought certification due to lack of attainability of the experience requirements. Many commented on how the certification process concentrates on extended litigation, whereas the practice of labor and employment focuses on settlement and resolution of matters. Additionally, the participants stated that the emphasis on traditional labor work in the certification process is not as obtainable for lawyers who practice in Florida.</p>
Yes, currently	23							
Yes, formerly	2							
No, never	75							

Question	Percentage of Responses	Insights
<p><b>13. If you have any general comments or suggestions about the board certification please list them here.</b></p>	<p>33 detailed responses were provided to this question</p>	<p>The majority of the responses focused on how the current litigation emphasis for the experience requirement is an extremely limiting factor because it is not aligned with current labor and employment practices.</p> <p>A few commented that the certification process needs to focus more on testing skills via hours actually worked on labor and employment matters ranging from the transactional to the litigation work.</p> <p>Several stated that appellate work is very involved and yet there is no opportunity for credit since oral arguments are limited to 15-30 minutes maximum of argument.</p> <p>Several respondents also questioned why the certification materials are not available on-line since the cost incurred in traveling to the classes serves as a hindrance to the certification process.</p> <p>Various advocates for the current system argued that to be a specialist in labor and employment law, the requirements must be stringent.</p>

**Current Rule and Proposed Draft Recommended Changes**  
**(Following July 22, 2015 Committee Call and confirmed by Committee August 18, 2015)**

**Initial Certification - Current**

...

***Rule 6-23.3 Minimum Standards***

...

**(b) Substantial Involvement.** Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement shall be made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.

**(c) Experience.** The applicant shall have a total of 30 days acting as the primary attorney, judge, hearing officer, arbitrator, or mediator in litigation and/or administrative proceedings concerning labor and employment law issues, including but not limited to evidentiary hearings, arbitrations, collective bargaining, representing clients in relation to governmental agencies, mediations, court hearings, taking depositions, and oral arguments. Any such proceeding lasting less than 8 hours, but more than 5 hours, shall be credited a full day. Any such proceeding lasting less than 4 hours, but at least 1 hour, shall be credited a half day. This experience shall have been attained within the 5 years immediately preceding the filing of the application for certification.

...

**Recertification- Current**

...

***Rule 6-23.4 Minimum Standards***

...

**(b) Substantial Involvement.** The applicant shall demonstrate continuous and substantial involvement in labor and employment law throughout the period since filing the last application for certification. Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement shall be made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.

**(c) Experience.** The applicant shall have 25 days of involvement in contested matters involving labor and employment issues since filing the last application for certification.



Applicants must have acted as the primary attorney, judge, hearing officer, arbitrator, or mediator in litigation and/or administrative proceedings concerning labor and employment law issues, including but not limited to evidentiary hearings, arbitrations, collective bargaining, representing clients in relation to governmental agencies, mediations, court hearings, taking depositions, and oral arguments. Any such proceeding lasting less than 8 hours, but more than 5 hours, shall be credited a full day. Any such proceeding lasting less than 4 hours, but at least 1 hour, shall be credited a half day. This experience shall have been attained within the 5 years immediately preceding the filing of the application for certification.

Direct supervision of attorneys engaged in contested matters, as defined above, may be considered in determining compliance with this requirement.

...

## Initial Certification – Proposed Changes

...

### Rule 6-23.2 Definitions

...

(c) **Primary attorney.** “Primary Attorney” shall include acting as primary attorney during proceedings such as the taking of depositions as well as primary responsibility either as lead counsel or primary counsel for discrete portions of a trial or proceeding.

### **Rule 6-23.3 Minimum Standards**

...

**(b) Substantial Involvement.** Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement shall be made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.

**(c) Experience.** Within the 5 years immediately preceding the filing of the application for certification, ~~the~~ applicant shall have a total of 30 days acting as the primary attorney, judge, hearing officer, arbitrator, or mediator in litigation and/or administrative proceedings concerning labor and employment law issues, including but not limited to jury trials, evidentiary hearings, arbitrations, collective bargaining, ~~representing clients in relation to governmental agencies~~ conciliation conferences with the EEOC or state deferral agency, on-site inspections by the EEOC, the DOL, OSHA or the OFCCP, Fair Labor Standards Act audits conducted by the DOL, unemployment compensation appeal hearings, mediations, court hearings, taking depositions, and oral arguments.

Any such proceeding lasting less than 8 hours, but more than 5 hours, shall be credited a full day. Any such proceeding lasting less than 4 hours, but at least 1 hour, shall be credited a half day. Conducting an oral argument at a state or federal appellate court shall automatically entitle the applicant to one (1) full day of credit, regardless of the amount of time that is allotted to the oral argument by the court. An applicant may also seek credit from the certification committee for activities not set forth above that involve labor and employment issues that are of sufficient complexity and otherwise demonstrate the applicant's labor and employment law experience. Experience credit to be awarded for any such activities shall be at the sole discretion of the certification committee. This experience shall have been attained within the 5 years immediately preceding the filing of the application for certification.

Notwithstanding the above, the following activities are not accepted as part of the 30 day experience requirement: attendance at scheduling and status conferences, defending depositions, preparation of pleadings, preparation of written discovery, and preparation of motions, memoranda, briefs and position statements.

...

## Recertification- Proposed Changes

...

### **Rule 6-23.4 Minimum Standards**

...

**(b) Substantial Involvement.** The applicant shall demonstrate continuous and substantial involvement in labor and employment law throughout the period since filing the last application for certification. Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement shall be made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.

**(c) Experience.** Within the 5 years immediately preceding the filing of the application for  
~~The certification, the~~ applicant shall have a total of 25 days acting as the primary attorney, judge,  
hearing officer, arbitrator, or mediator in litigation and/or administrative proceedings concerning  
labor and employment law issues, of involvement in contested matters involving labor and  
employment issues since filing the last application for certification. Applicants must have acted  
as the primary attorney, judge, hearing officer, arbitrator, or mediator in litigation and/or  
administrative proceedings concerning labor and employment law issues, including but not  
limited to jury trials, evidentiary hearings, arbitrations, collective bargaining, ~~representing clients~~  
~~in relation to governmental agencies,~~ conciliation conferences with the EEOC or state deferral  
agency, on-site inspections by the EEOC, the DOL, OSHA or the OFCCP, Fair Labor Standards  
Act audits conducted by the DOL, unemployment compensation appeal hearings, mediations,  
court hearings, taking depositions, and oral arguments.

Any such proceeding lasting less than 8 hours, but more than 5 hours, shall be credited a full day. Any such proceeding lasting less than 4 hours, but at least 1 hour, shall be credited a half day. Conducting an oral argument at a state or federal appellate court shall automatically entitle the applicant to one (1) full day of credit, regardless of the amount of time that is allotted to the oral argument by the court. An applicant may also seek credit from the certification committee for activities not set forth above that involve labor and employment issues that are of sufficient complexity and otherwise demonstrate the applicant's labor and employment law experience. Experience credit to be awarded for any such activities shall be at the sole discretion of the certification committee. This experience shall have been attained within the 5 years immediately preceding the filing of the application for certification.

Direct supervision of attorneys engaged in contested matters, as defined above, may be considered in determining compliance with this requirement.

Notwithstanding the above, the following activities are not accepted as part of the 25 day experience requirement: attendance at scheduling and status conferences, defending depositions, preparation of pleadings, preparation of written discovery, and preparation of motions, memoranda, briefs and position statements.

...