

**Date**

August 10, 2016

Time

3:10 pm – 5:00 pm

Instructors

Jenifer Schaye, CFE
General Counsel

Patrick Virgadamo, JD, CFE
Senior Attorney

Location

Monroe, LA

Method of Delivery

Classroom instruction

Learning Level

Basic

Prerequisite

None

Course 104

HR Laws, Compliance & Administration

Description

This course will discuss the current issues in Human Resource laws including exempt vs. non-exempt employees, the Fair Labor Standards Act and the Family and Medical Leave Act.

Objectives

After this class participants will be able to:

- Explain the basics of the FLSA and the FMLA and how it pertains to their governmental entity.
- Clearly identify exempt vs. non-exempt employees and will be able to determine whether an individual should be classified as an employee or independent contractor based on the new regulations.

Who Will Benefit

- Elected Officials/Appointed Officials
- Local Government Employees/Local Government Auditors

About the Instructors**JENIFER SCHAYE, GENERAL COUNSEL**

Jenifer Schaye is General Counsel for the Legislative Auditor of the State of Louisiana. She is a graduate of the University of Dallas and of St. Louis University Law School. She has practiced law continuously for the last thirty-eight years in Texas and Louisiana. Jenifer has substantial experience in the governmental arena. She has worked as a Legislative Aid to a State Representative in Texas. She was a Louisiana Assistant Attorney General for eleven years. As an Assistant Attorney General, she focused on tort, insurance law, and gaming law and all aspects of the Administrative Procedure Act. In her capacity as general counsel to the Legislative Auditor, Jenifer advises on public law issues and laws relating to fiscal matters, ethics issues, and all public laws which impact political subdivisions and the audits of political subdivisions on the local and state level. Jenifer also serves as a board member on the Louisiana Survivor's Benefit Board as the Legislative Auditor's designee. In addition, Jenifer represents the Legislative Auditor and staff in those matters where they are called to testify and/or to produce records for further inquiry by state and federal courts. She advises the Louisiana Legislative Audit Advisory Council on relevant audit law issues.

PATRICK VIRGADAMO, SENIOR ATTORNEY

Patrick Virgadamo is a Senior Staff Attorney for the Office of the Louisiana Legislative Auditor (LLA). He is a graduate of McNeese State University (B.A. 2004), Louisiana State University (M.A. 2009), and the LSU Paul M. Hebert Law Center (J.D. / G.D.C.L. 2009). During law school, Patrick served on the Law Center's Constance Baker Motley National Moot Court Competition Team and externed for a semester with the Honorable Judge Robert Downing of the Louisiana First Circuit Court of Appeal. Patrick is licensed as a practicing attorney before the Louisiana State Bar and the Eastern, Western, and Middle U.S. Districts of Louisiana. In his capacity as Staff Attorney, Patrick has researched and written opinions on numerous and various questions facing the Auditor's Office, state and local officials, and public entities in general. Patrick is certified as a state agency ethics liaison and Certified Ethics Trainer with the Louisiana Board of Ethics. Patrick is also a Certified Fraud Examiner (CFE) and member of the Association of Certified Fraud Examiners. Patrick has also worked extensively with the LLA's Human Resources Services (HR), where he has assisted HR and the General Counsel in addressing questions relating to employment law and in drafting and implementing numerous office policies such as the LLA's Crisis Leave, Military Leave, Sexual Harassment, and Professional Development policies.

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HR Law: Strategic Enforcement Issues

**Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor**

**Presented by
Jenifer Schaye, CFE
General Counsel**

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HR LAW: Strategic Enforcement Issues

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor

Presented by:
Jenifer Schaye, CFE
General Counsel

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Strategic Enforcement Issues

National Enforcement Priorities

- Eliminating Barriers in Recruitment and Hiring



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Strategic Enforcement Issues

National Enforcement Priorities (cont'd)

- Protecting Immigrant, Migrant and Other Vulnerable Workers



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Strategic Enforcement Issues

National Enforcement Priorities (cont'd)

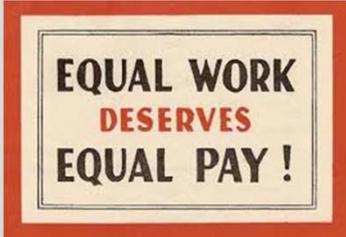
- Addressing Emerging and Developing Issues
 - 1) Certain ADA issues, including coverage, reasonable accommodation, qualification standards, undue hardship, and direct threat;
 - 2) Accommodating pregnancy-related limitations under the Americans with Disabilities Act Amendments Act (ADAAA) and the Pregnancy Discrimination Act (PDA); and
 - 3) Coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply.

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Strategic Enforcement Issues

National Enforcement Priorities (cont'd)

- Enforcing Equal Pay Laws



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Strategic Enforcement Issues



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Strategic Enforcement Issues

Sex Hiring Discrimination



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Strategic Enforcement Issues

Discrimination Against

- ❖ Immigrant
- ❖ Migrant
- ❖ Other Vulnerable Workers



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Strategic Enforcement Issues

LGBT Coverage

**I
Am a
...Person!**

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Strategic Enforcement Issues

LGBT Coverage (Cont'd):

Baldwin v. Department of Transportation (EEOC Appeal No. 0120133080)

Background: Baldwin alleged that the Federal Aviation Agency (FAA) discriminated against him on the basis of his sexual orientation: he alleged that his manager made disparaging comments to him and others about his sexual orientation, and that he was not promoted to a permanent Front Line Manager position at the Miami Airport's Air Traffic Control Tower because he is gay.

Issue: Is discrimination on the basis of sexual orientation included in the prohibition against sex discrimination under Title VII of the Civil Rights Act of 1964?

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Strategic Enforcement Issues

LGBT Coverage (Cont'd):

Holding: Yes. Allegations of discrimination on the basis of sexual orientation *always and necessarily* state claims of discrimination on the basis of sex. In other words, if an employee is discriminated against because s/he is gay, the employee will be able to show that the discrimination s/he experienced was sex discrimination. This is because it is impossible to consider someone's sexual orientation without considering their sex and the sex of the person(s) with whom the employee is romantically involved; and/or because the discrimination is based on a belief that men should only be attracted to women and women to men, which is a fundamental sex stereotype, norm, or expectation.

Strategic Enforcement Issues

***OBERGEFELL ET AL. v.
HODGES, DIRECTOR, OHIO DEPARTMENT
OF HEALTH, ET AL.
135 S.Ct. 2584 (06/26/15)***

Strategic Enforcement Issues

REASONABLE ACCOMMODATION



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Strategic Enforcement Issues

Reasonable Accommodation (Cont'd)

➤ EEOC has given life to the ADAAA filing and successfully prosecuting cases involving conditions such as diabetes, cancer, intellectual disabilities, and epilepsy, often difficult to cover prior to the Amendments



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Strategic Enforcement Issues

Reasonable Accommodation (Cont'd)

Noteworthy ADA Appellate Cases:

➤ ***EEOC v. Ford*, 752 F.3d 634 (6th Cir. 2014) (en blanc)**

In an 8-5 decision the Sixth Circuit, sitting en banc, vacated the panel's decision, and granted summary judgment for Ford. The Court held as a matter of law that the charging party, a resale buyer, was not qualified for her job due to unpredictable absences caused by her disability. The Court stated that regular in-person attendance was an essential function of most positions, and that telecommuting, as proposed in this case, was not a reasonable accommodation.

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Strategic Enforcement Issues

Reasonable Accommodation (Cont'd)

Noteworthy ADA Appellate Cases:

➤ ***EEOC v. LHC Group, Inc. d/b/a Gulf Coast Homecare*, 773 F.3d 688 (5th Cir. 2014)**

The 5th Circuit affirmed, in part, the lower court's summary judgment against the EEOC. Clarifying the long-standing intra-circuit split on proving a prima facie case under ADA, the 5th Circuit held that an employee must show "he was subject to an adverse employment decision *on account of his disability*" (773 F.3d At 697). The court remanded to resolve the disputed issues of material fact.

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Strategic Enforcement Issues

Reasonable Accommodation (Cont'd)

Noteworthy ADA Appellate Cases:

➤ *EEOC v. United*, 693 F.3d 760 (7th Cir. 2012)

(Effectively en banc; reversed prior 7th Circuit precedent and held that “best qualified” policies do not trump the ADA’s reassignment-as-reasonable-accommodation obligations; cert, denied May 2013).

Strategic Enforcement Issues

Pregnancy Discrimination



Strategic Enforcement Issues

Pregnancy Discrimination (cont'd)

Young v. UPS (Cert. Granted)

- Fourth circuit affirmed denial of summary judgment. (see 707 F.3d 437, 4th Cir. 2013). The circuit court agreed with the district court that the petitioner failed to present direct evidence of discrimination or establish a prima facie case under *McDonnell-Douglas*.

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Strategic Enforcement Issues

Young v. UPS (cont'd)

- **Question Presented:** The Pregnancy Discrimination Act, 42 U.S.C. 2000e(k), provides that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same ...as other persons not so affected but similar in their ability or inability to work.” The question presented is whether, and in what circumstances, an employer that provides work accommodations to non-pregnant employees with work limitations must provide comparable work accommodations to pregnant employees who are “similar in their ability or inability to work.” U.S./EEOC filed a brief as amicus in support of petitioner.

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Strategic Enforcement Issues

Young v. UPS (cont'd)

- Several amicus briefs filed in support of petitioner including by Law Professors and Women's Rights Organizations; Members of Congress; Bipartisan State and Local Legislators; and 23 Pro-Life Organizations and Judicial Education Project.
- Several business groups filed on behalf of UPS.

Strategic Enforcement Issues

Young v. UPS (cont'd)

- On April 27, 2015, Supreme Court, in a 6-3 decision reversed summary judgment in favor of UPS, holding that a pregnant worker wishing to show disparate treatment through indirect evidence may do so through the application of the McDonnell Douglas framework.

Strategic Enforcement Issues

Young v. UPS (cont'd)

- The Court recognized the broad application of the PDA and ADA (as amended), stating “plaintiff can create a genuine issue of material fact as to whether a significant burden exists by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers.” 135 S.Ct. 1338, 1354 (2015).

Strategic Enforcement Issues

Young v. UPS (cont'd)

- The Court remanded the case to determine whether UPS provided similarly situated employees more favorable treatment and whether UPS’ reasoning for Young’s less favorable treatment was a pretext.

Strategic Enforcement Issues

Religious Discrimination



Strategic Enforcement Issues

Religious Discrimination

EEOC v. Abercrombie and Fitch (Cert. Granted)

Question Presented (petitioner): “Whether an employer can be liable under Title VII of the Civil Rights Act of 1964 for refusing to hire an applicant or discharging an employee based on a religious observance and practice only if the employer has actual knowledge that a religious accommodation was required and the employer’s actual knowledge resulted from direct, explicit notice from the applicant or employee.”

Strategic Enforcement Issues

EEOC v. Abercrombie and Fitch (Cert. Granted)

EEOC v. Abercrombie and Fitch, 731 F.3d 1106 (10th Cir. 2013): A divided panel reversed summary judgment for the EEOC and ordered the dismissal of the case in a case involving the denial of job to Muslim company on sufficient notice of her need for an accommodation.

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Strategic Enforcement Issues

EEOC v. Abercrombie and Fitch (Cert. Granted)

➤ Nine amicus briefs filed in support of EEOC by various organizations including Beckett Fund, a coalition of Orthodox Jewish groups, Seventh Day Adventists and other religious groups, CAIR, and Lambda Legal. Three briefs filed in support of Abercrombie, including by U.S. Chamber of Commerce and EEAC.

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Strategic Enforcement Issues

EEOC v. Abercrombie and Fitch (Cert. Granted)

- In an 8-1 decision, Justice Scalia writing for the Court, ruled in favor of the EEOC. The EEOC alleged that Samatha Elauf, a teenager who as part of her Muslim faith wore a head scarf was denied hire for failing to conform to the company's Look Policy banning caps. EEOC filed suit against Abercrombie alleging the company refused to hire Elauf in violation of Title VII's protection from religious discrimination.

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Strategic Enforcement Issues

EEOC v. Abercrombie and Fitch (Cert. Granted)

- The Supreme Court held that Title VII's disparate treatment provision prohibits actions motivated by a desire to avoid accommodating a religious practice, whether or not the employer had actual knowledge of the need for her accommodation.
- The Court stated "the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions."

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Questions

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**CONTACT INFORMATION
LEGAL SECTION**

Jenifer Schaye, CFE
General Counsel
Louisiana Legislative Auditor
(225) 339-3871
jschaye@lla.la.gov

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