



# Labor & Employment Law Section Newsletter

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## President Obama Issues Fair Pay and Safe Workplaces Executive Order

**Nicole A. Young, Esq.**

On July 31, 2014, President Barack Obama issued an [Executive Order](#) imposing new requirements on federal contractors, including the disclosure of any labor law violations and barring certain federal contractors from requiring employees to sign mandatory arbitration agreements. The accompanying White House [fact sheet](#) notes that the Obama Administration expects the Order “to be implemented on new contracts in stages, on a prioritized basis, during 2016,” after the Federal Acquisition Regulatory (“FAR”) Council and the Secretary of Labor have had time to promulgate regulations and issue guidance. The asserted goal of the Order is to ensure that repeat violators do not get federal contracts.

### Labor Law Violation Reporting

#### **Pre-Award Disclosure**

For procurement contracts for goods and services, including construction, where the estimated value of supplies and services exceeds \$500,000, the bidding contractor will be required to disclose whether there have been any labor law violations, defined as “administrative merits determinations, arbitral awards or decisions, or civil judgments ren-



dered against the bidding contractor within a preceding three year period” for violations of 14 federal employment laws and Executive Orders, as well as state law equivalents to be further defined by the Department of Labor (“DOL”).

The disclosing contractor will be given the opportunity to make known any steps taken to correct the violations of or improve compliance with the labor laws violated. The agency’s Labor Compliance Advisor, shall advise the contracting officer whether the agreements are in place or are otherwise needed to address appropriate remedial measures, compliance assistance, steps to resolve issues to avoid further violations, or other related matters.

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## June 2014 General Meeting, Elections, CLE and Social Gathering

Thanks to all who came out to the Section’s June 19, 2014 General Meeting at the Hard Rock Hotel. Prior to the General Meeting the Section put on an excellent and well-attended CLE on Practicing Before the NERC and EEOC. The General Meeting included the elections of the new members of the Section Executive Committee. The newly elected and installed officers are as follows:

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## Labor and Employment Law Section Executive Board



**J.P. Kemp**  
Vice-Chairperson/  
Chairperson-Elect

Partner at Kemp & Kemp

Employee-side employment and  
labor law



**Deanna Brinkerhoff**  
Vice-Chairperson/  
Chairperson-Elect

Associate at Holland and Hart

Employee-side employment and  
labor law



**Kristina Gilmore**  
Assistant City Attorney

City of Henderson

Employment advice/counseling  
for government HR  
departments



**Peter Navarro**  
Treasurer

Associate at Jackson Lewis

Management-side  
employment and labor law



**Rebecca Bruch**  
Northern Nevada  
Representative

Partner at Erickson, Thorpe &  
Swainston

Management-side  
employment and labor law



**Matthew Cecil**  
CLE Subcommittee  
Chairperson

Associate at Littler Mendelson

Employer representation  
regarding employee disputes



**Ann McDermott**  
Membership and  
Communications Chairperson  
Office of the Attorney General

Government Employment Law

## Communications News

### Section Updates

#### Seeking Members to Serve on the Section's Amicus Brief Standing Committee

On June 19, 2014, the Executive Committee adopted [policies and procedures for the Section's Amicus Brief Standing Committee](#), which were subsequently approved by the State Bar's Board of Governors. The last and most important step in launching the Standing Committee is the appointment of committee members who will serve three year terms. The Executive Committee is now accepting nominations and expressions of interest to fill a minimum of six committee member positions —

three who are defense-side practitioners and three who are plaintiff-side practitioners. Our goal is to select committee members and inform the Nevada Supreme Court of the Standing Committee's implementation before the end of this year. So, please consider serving on this very important committee and contact the Section Chairperson, JP Kemp, at [JP@kemp-attorneys.com](mailto:JP@kemp-attorneys.com) to submit nominations and expressions of interest by **October 1, 2014**.

#### Now Accepting Submissions for the *Second Issue* of the Nevada Practitioners' Journal of Labor and Employment Law

The Section's Journal Subcommittee is already hard at work on the inaugural issue of the Nevada Practitioners' Journal of Labor and Employment Law, which is slated to be published in December. We also already have two authors committed to preparing submissions for the second issue of the Journal, tentatively slated for a July 2015 publication date! The

Journal is seeking additional authors and submissions for its second issue to meet our goal of six articles. If you are interested in being published in the Journal, please contact the Journal Subcommittee Chairperson, Eddie Keller, at [ekeller@kzlaw.com](mailto:ekeller@kzlaw.com) before **February 28, 2015**.

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### Decision Issued in Case Involving North Las Vegas Police Officer

The State of Nevada Local Government Employee Management Relations Board issued a decision on September 10, 2014 in the case of *Timothy Frabbiele v. the City of North Las Vegas; North Las Vegas Police Dept.; and North Las Vegas Police Officers Assn.*

In short summary, Timothy Frabbiele was hired as a police officer by the City of North Las Vegas in July of 2006. In 2007, Frabbiele came under investigation and was eventually put on administrative leave with pay. After an investigation, Frabbiele's employment was terminated. He challenged the decision and was reinstated to administrative leave with pay status.

[Read the full case summary.](#)

## Fair Pay and Safety

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### Post-Award Disclosure

In addition to the newly mandated pre-award disclosure, the Executive Order provides for an ongoing duty to update the disclosure every six months during the performance of a covered contract. Further, for any subcontract where the estimated value of the supplies acquired and the services required exceeds \$500,000 and that is not for commercially available off-the-shelf items, prime contractors must:

1. Require every subcontractor to disclose labor law violations to be updated every six months;
2. Before or within 30 days of awarding a contract, "consider the information submitted by the subcontractor... in determining whether the subcontractor is a responsible source that has a satisfactory record of integrity and business ethics;" and
3. Incorporate language regarding the subcontractor's disclosure obligation in applicable contracts.

The federal administrator of general services will be creating a website that details the reporting disclosures once they become effective.

### Labor Compliance Advisor

The Executive Order also mandates that every agency designate "a labor compliance advisor," who will be responsible for working with contracting officers to determine whether a bidder or current contractor is a "responsible source." The labor compliance advisor will also be responsible for consulting with relevant enforcement agencies, advising contracting officers, and helping agency

officials determine appropriate responses to address disclosed violations.

### Government-Wide Consistency

The Executive Order tasks the Federal Acquisition Regulatory (FAR) Council, and other entities, to promulgate amendments to the Federal Acquisition Regulation "to identify considerations for determining whether serious, repeated, willful, or pervasive violations" are deemed to "demonstrate a lack of integrity or business ethics." The Secretary of Labor is required to develop guidance to assist the agencies in implementing final rules issued by FAR Council.

### "Paycheck Transparency"

Federal contractors and subcontractors will be required to provide all employees and independent contractors performing work under a contract for whom the employer is required to maintain wages under the Davis Bacon Act, the Service Contract Act, or "equivalent state law" with "paycheck transparency." Specifically, each pay period workers must be provided with a document that contains information about hours worked, overtime hours, pay, and any additions made to or deducted from pay." There is an exception for providing the hours worked for exempt employees if the contractor or subcontractor informs the workers of their overtime exempt status. Any worker who is treated as an independent contractor and not an employee must be provided with a written document regarding the worker's status.

### Limits on Mandatory Arbitration

In a direct attempt to ban the use of pre-claim mandatory arbitration agreements, the

Executive Order mandates that, for each contract with an estimated value in excess of one million dollars (except for contracts for commercially available off-the-shelf items), contractors and subcontractors agree that the "the decision to arbitrate claims arising under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment may only be made with the voluntary consent of employees or independent contractors after such disputes arise." This limit does not apply to employees covered by a collective bargaining agreement or an employee or independent contractor who entered into a valid arbitration agreement prior to this Executive Order. Nevertheless, if the agreement is later renegotiated or replaced, the contractor may change the terms of the mandatory arbitration agreement.

**Nicole A. Young** is an associate with Kamer Zucker Abbott in Las Vegas. Nicole joined the firm as a paralegal and then attended and graduated from the William S. Boyd School of Law. Nicole also externed for Judge Ron Israel.



- Chairperson – J.P. Kemp
- Vice Chairperson – Deanna Brinkerhoff
- Secretary – Kristina Gilmore
- Treasurer – Peter Navarro
- CLE Sub-committee Chairperson – Matt Cecil
- Membership and Communications Subcommittee Chairperson – Ann McDermott
- Journal Subcommittee Chairperson – Eddie Keller
- Northern Nevada Representative – Rebecca Bruch

With recent changes to the Section's Bylaws the officers now serve two-year terms which it is hoped will result in smoother operation of the section as longer terms will permit the officers to gain experience and utilize that experience in running the Section. The Executive Committee will also be studying ways in which to provide for the staggering of terms in the future so that the entire Executive Committee does not turn over at the same time, again providing for smoother operation and easier transitions in leadership of the Section.

After the CLE presentation and General Meeting, many members stayed for the section's social gathering, which was held at Pink Taco inside the Hard Rock Hotel, where attendees enjoyed great food and good conversation.