



Robbins Schwartz
One Team. Making Your Mission Ours.

Legal Update for Illinois Higher Education Institutions Virtual Conference

September 14, 2023

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VIRTUAL LEGAL UPDATE FOR ILLINOIS HIGHER EDUCATION INSTITUTIONS

Thursday, September 14, 2023

AGENDA

8:30 a.m. – 9:30 a.m.

GENERAL SESSION

Workplace and Educational DEI Initiatives Face Significant Challenges After the Supreme Court's Recent Affirmative Action Decision
Presented by: Frank B. Garrett III

CONCURRENT SESSIONS

9:45 a.m. – 10:45 a.m.

Session 1

Addressing Student Mental Health Concerns and Threats to Campus Safety
Presented by: Emily P. Bothfeld and Michelle L. Weber

Top Construction Problems and Solutions
Presented by: Matthew J. Gardner and Christopher R. Gorman

Higher Education Collective Bargaining Trends and Management Strategies for Effective Negotiations
Presented by: Philip H. Gerner III and Thomas C. Garretson

11:00 a.m. – 12:00 p.m.

Session 2

Navigating the Waters of FMLA, ADA, and Employee Leave Rights
Presented by: Kevin P. Noll

Data Breaches and Ransomware Attacks: Strategies for Protecting Data and Security and Responding to Data Incidents
Presented by: Matthew J. Gardner and Emily P. Bothfeld

12:15 p.m. – 1:15 p.m.

Session 3

Bidding from the Basics to the Advanced
Presented by: Howard A. Metz and Kenneth M. Florey

Bills, Bills, Bills: An Overview of New Legislation Impacting Illinois Colleges
Presented by: Joseph J. Perkoski



General Session | 8:30 a.m.

Workplace and Educational DEI Initiatives Face Significant Challenges after the Supreme Court's Recent Affirmative Action Decision

Workplace and educational diversity, equity and inclusion (DEI) initiatives are facing growing opposition and challenges. Opponents of DEI often characterize DEI measures as unfair, unnecessary, and even racist. The Supreme Court, on June 29, 2023, ruled that Harvard University and the University of North Carolina's use of race in student admissions decisions violated the U.S. Constitution's Equal Protection Clause. Because of the Court's decision, race conscious policies designed to increase diversity are facing challenges through lawsuits and state actions. This presentation will review the bases of the Supreme Court's decision, discuss its impact on college programs and activities, and the implications for workplace DEI initiatives. Additionally, the presentation will provide guidance and recommendations for colleges on implementing and maintaining lawful DEI measures.

Presenter:

[Frank B. Garrett III](#), Partner

Session 1 | 9:45 a.m.

Please Select One Topic Per Session

Addressing Student Mental Health Concerns and Threats to Campus Safety

In Illinois and throughout the country, college students' mental health needs are at an all-time high. At the same time, institutions are faced with the ongoing challenge of maintaining a safe campus environment. In this breakout session, we will explore various legal issues related to student mental health and campus safety, including ADA/Rehabilitation Act compliance, reporting and notification requirements, and coordination with external agencies such as law enforcement and community mental health providers. Through an interactive Q&A, we will discuss strategies and best practices for supporting students' mental health needs while promoting a safe and secure campus community.

Presenters:

[Emily P. Bothfeld](#), Partner

[Michelle L. Weber](#), Partner

Top Construction Problems and Solutions

College construction projects can vary from small annual maintenance projects to new buildings or campuses costing tens of millions of dollars. No matter the size, construction projects present a wide variety of legal obligations and risks for project owners. This presentation will identify some of the most common problems and challenges that colleges face on construction projects, such as project funding, land acquisition and zoning, selecting your project team, completing the project on time, change orders, and construction payment and defect claims. Most importantly, the presenters will provide strategies and common sense solutions to prevent these problems in the first place, or to efficiently resolve them if problems do arise to keep your project moving and towards final completion.

Presenters:

[Matthew J. Gardner](#), Partner

[Christopher R. Gorman](#), Associate

Higher Education Collective Bargaining Trends and Management Strategies for Effective Negotiations

This presentation will cover the options available to higher education institutions to address vital issues at the bargaining table as well as review strategies for colleges to achieve their goals during union negotiations.

Presenters:

[Philip H. Gerner III](#), Partner

[Thomas C. Garrettson](#), Partner

Session 2 | 11:00 a.m.

Please Select One Topic Per Session

Navigating the Waters of FMLA, ADA, and Employee Leave Rights

Managing employee leave rights can create challenges for college administrators. Employee rights under the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and state laws often intersect, which creates confusion for administrators deciphering the college's legal obligations. It is critical for administrators to understand the employer obligations under each law when considering leave requests. This session will review the employer obligations under the FMLA, ADA, and state laws addressing employee leave rights. We will provide best practices for addressing employee leave requests, including the always challenging intermittent FMLA scenario, and provide straightforward guidance to reduce legal liability.

Presenter:

[Kevin P. Noll](#), Partner

Data Breaches and Ransomware Attacks: Strategies for Protecting Data and Security and Responding to Data Incidents

With cyber-security incidents becoming more and more prevalent in higher education institutions, including the recent security breach affecting the National Student Clearinghouse, colleges need to prioritize their data security policies, procedures, and strategies. This presentation will discuss the legal requirements that colleges must follow and implement related to data security, and some of the best practices to minimize the likelihood of a data breach or ransomware attack. The presentation will also identify ways that colleges can shift some of the risk associated with these privacy incidents to vendors that ultimately have access to the data and student records. Finally, our presenters will discuss how colleges should respond once they become aware of a data breach, including potential notification requirements about the incident.

Presenters:

[Matthew J. Gardner](#), Partner

[Emily P. Bothfeld](#), Partner

Session 3 | 12:15 p.m.

Please Select One Topic Per Session

Bidding from the Basics to the Advanced

Public bidding for community colleges from construction to purchasing can be complicated and full of traps. This presentation will help you navigate the laws and provide you with practical advice to make sure you are in compliance with the applicable statutes.

Presenters:

[Howard A. Metz](#), Partner

[Kenneth M. Florey](#), Partner

Bills, Bills, Bills: An Overview of New Legislation Impacting Illinois Colleges

After a busy spring legislative session, Illinois colleges have a variety of new legal obligations and opportunities to be aware of. Please join us as we discuss new and amended laws regarding board governance, required employment notices, employee benefits, emergency contraception, tuition, grant and scholarship programs, and more.

Presenters:

[Joseph J. Perkoski](#), Managing Partner

Biographies

FRANK B. GARRETT III

PARTNER, CHICAGO

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Frank B. Garrett III represents and counsels public and private employers in all aspects of employment law, including litigation defense of workplace complaints and charges. Frank also reviews, audits and trains organizations on their Diversity, Equity, and Inclusion initiatives. Frank is often called upon to investigate workplace complaints of harassment, discrimination, violation of employer leave policies and employee discipline incidents.

Frank practices regularly in both state and federal courts at both the trial and appellate levels. Frank is a regular presenter on employment law and workplace issues at both the state and national levels. He is continually recognized as an Illinois Leading Lawyer.

AWARDS

Illinois Leading Lawyer, Government and Regulatory-Related

Illinois Leading Lawyer, Employment and School Law

Illinois Super Lawyers

RECENT PUBLICATIONS

Contributing Author, "Employment Discrimination" *School Law: Personnel and Student Issues*, IICLE (1996, 1999, Supp. 2001, 2005, 2010, 2012, 2015, and 2021)

"Extended Medical Leave Under ADA Soundly Rejected by 7th Circuit," *Chicago Daily Law Bulletin* (2017)

"First Amendment Protections Get Broader for Government Employees," *Chicago Daily Law Bulletin* (2016)

"Big-box Employee's Attempt to 'Scam' Company Undercuts FMLA Claims," *Chicago Daily Law Bulletin* (2015)

Employers Must Rethink Employee 'Look' Policies After High Court Decision," *Chicago Daily Law Bulletin* (2015)

"Using Social Network Screening as Part of the Hiring Process: Employers Should Proceed with Caution," *Inquiry & Analysis*, National School Boards Association's Council of School Attorneys (2013)

RECENT PRESENTATIONS

School District Diversity, Equity and Inclusion Guidance, Northwest Personnel Administrators Group Meeting (September 2022)



PRACTICE AREAS

Employment Law
Diversity, Equity and
Inclusion Review, Audits
and Training
Education Law Litigation

EDUCATION

J.D., DePaul University
College of Law

B.A., Oberlin College

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

Trial Bar of the U.S.
District Court for the
Northern District of Illinois

U.S. District Court for the
Northern District of Illinois

U.S. District Court for the
Central District of Illinois

U.S. District Court for the
Southern District of Illinois

Supreme Court of Illinois

Safeguarding School District's Diversity, Equity and Inclusion Initiatives from Unlawful Discrimination Challenges, American Association of School Personnel Administrators (April 2022)

A Review of Important New Laws Impacting Illinois School Districts, Illinois Association of School Boards (January 2022)

Sexual Violence and Harassment on Campus, Illinois Community College Trustee Association (June 2021)

ORGANIZATIONS

American Bar Association,
Section on Labor and
Employment

National Association of
Diversity Officers in
Higher Education

Chicago Bar Association

Illinois Council of School
Attorneys



EMILY P. BOTHFELD

PARTNER, CHICAGO

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ebothfeld@robbins-schwartz.com

Emily Bothfeld counsels higher education institutions and K-12 school districts on various issues, including student discipline, Title IX, free speech and expression, student disability rights, board governance, and policy development. In her role leading the firm's Title IX practice, Emily performs extensive work with educational institutions to ensure compliance with Title IX and related laws in all aspects of employment and education, including recruitment, admissions, academic programs, counseling, financial assistance, athletics and extracurricular activities, and facilities access. Emily was instrumental in Robbins Schwartz's development of policies, procedures, and training materials for school districts and higher education institutions in response to the United States Department of Education's 2020 amendments to the Title IX regulations, and Emily has significant experience working closely with Title IX Coordinators and administrators tasked with investigating and adjudicating sexual harassment reports and complaints.

Emily also represents both educational institutions and private companies in matters related to student privacy. She regularly advises school districts regarding privacy considerations and compliance requirements associated with the use of educational technology platforms. She has significant experience negotiating data privacy agreements and education-related service agreements on behalf of schools and organizations. In 2020, Emily co-drafted the Illinois addendum to the National Data Privacy Agreement ("NDPA"), a standardized agreement used by school districts and educational technology vendors throughout the United States to streamline the contracting process and establish a consistent framework for protecting and managing student data. The NDPA is currently being utilized by approximately 750 school districts in Illinois and over 11,000 nationally to facilitate compliance with state and federal student privacy and security laws.

Emily has extensive experience representing educational institutions in responding to complaints filed with the U.S. Department of Education's Office for Civil Rights, Illinois State Board of Education, Office of the Illinois Attorney General, and Illinois Department of Human Rights. Emily regularly defends educational entities in state and federal court in defending against constitutional, civil rights, and breach of contract claims.

Before joining Robbins Schwartz, Emily represented students with disabilities in special education matters. Emily attended the George Washington University Law School, where she was a member of the George Washington International Law Review and the GW Law Moot Court Board. Prior to attending law school, Emily taught high school mathematics and science in Hangzhou, China.



PRACTICE AREAS

Education Law
Higher Education
Special Education
Student Discipline

EDUCATION

J.D., *with honors*, George
Washington University
Law School

B.S., *cum laude*,
Vanderbilt University

ADMITTED TO PRACTICE

U.S. Court of Appeals for
the Seventh Circuit

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Trustee, Associated
Colleges of Illinois

Chicago Bar Association

Illinois Council of School
Attorneys

National Council of School
Attorneys

RECENT PUBLICATIONS

“College Admissions Under Fire as Top Court Takes Affirmative Action Case,”
Chicago Daily Law Bulletin (2022)

“Disabled Athlete Can’t Support ADA Claims,” *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED
Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

Legal Gymnastics in the Age of COVID and Other Challenges, Illinois Council of
Community College Presidents Retreat (January 2022)

*Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA,
and PIPA and Strategies for Compliance*, Secured Schools K-12 Data Privacy and
Cybersecurity Conference (January 2022)



MICHELLE L. WEBER

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Michelle practices in the area of education law with a focus on special education and student matters. She counsels school districts and community colleges regarding the IEP process, due process, Section 504, student discipline, board policy and student records.

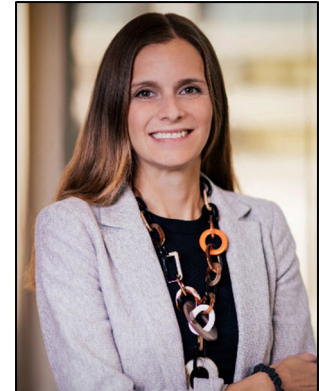
Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

RECENT PUBLICATIONS

“DeVos Rollbacks Could Hit Schools Hard,” *Chicago Daily Law Bulletin* (2017)

RECENT PRESENTATIONS

Removals to Interim Alternative Educational Setting for 45 School Days... Who, What, Where, When, Why, and How?, Illinois Alliance of Administrators of Special Education Winter Conference (February 2022)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., Loyola University
College of Law

M.A., Loyola Marymount
University

B.A., Trinity College

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School
Attorneys

MATTHEW J. GARDNER

PARTNER, CHICAGO

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Matt Gardner is a partner at Robbins Schwartz where he is a member of the firm's construction, commercial transactions, real estate, and public finance practice groups. Matt represents private and public project owners over the course of construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, surety and warranty claims, and any resulting litigation concerning payment, delays or design or construction defects. Matt also represents contractors, subcontractors and material suppliers on a variety of construction-related matters, including payment claims, preserving and enforcing lien rights, and defending defect claims.

In addition to his construction and real estate practice, Matt represents school districts, colleges, and educational technology companies in matters relating to student records and data privacy. Matt regularly drafts and negotiates data privacy agreements, software license agreements, and other service agreements that comply with applicable federal and state privacy laws and regulations while simultaneously protecting his clients' interests. He was part of a team of Robbins Schwartz attorneys that drafted the Illinois addendum to the National Data Privacy Agreement and frequently advises clients on the evolving legal landscape for education privacy matters and risks associated with data breaches or ransomware attacks. Matt has worked with educational technology clients to successfully complete responses and bid submissions as part of the procurement process for some of the largest school districts in the nation resulting in significant contracts. He also works with education technology clients to prepare subcontracts, policies, and procedures to address data security and compliance with the multitude of state and federal data privacy laws.

Matt is the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee (2018-19), has testified before the General Assembly on construction-related matters, and is a member of the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt has also performed pro bono services representing clients through Chicago Volunteer Legal Services and Franciscan Outreach.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2021-2022)

RECENT PUBLICATIONS

Contributing author, "Environmental Issues" *Construction Law: Transactional Considerations*, IICLE (2021)



PRACTICE AREAS

Commercial Law
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
Wisconsin Law School

B.S., University of Utah

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Contributing author, "School Property and Environmental Issues" *School Law: Organization, Finance, and Property*, IICLE (2017, 2021)

Contributing author, "Turner on Illinois Mechanics Liens," *Chapter III – Making a Lien Against Private Property Enforceable* (2019)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

Bidding 101, IASBO Emerging SBO Summit (July 2022)

Legal Considerations Related to Renewable Energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (May 2022)

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA, and PIPA and Strategies for Compliance, Secured Schools K-12 Data Privacy and Cybersecurity Conference (January 2022)



CHRISTOPHER R. GORMAN

SENIOR COUNSEL, CHICAGO & LISLE

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Chris practices in the firm's commercial, construction, and real estate practice groups, representing public sector clients in commercial transactions, contracting, construction and related transactional matters. Chris has also served in the firm's labor and employment practice group and counseled employers in all aspects of labor and employment law, including labor relations, collective bargaining, grievance and dispute resolution, workplace investigation, employee discipline, terminations and reductions in force, and employment discrimination. Chris also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Prior to joining Robbins Schwartz, Chris served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing.

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations 2021 Edition*, IICLE (2021)

"Continuing Controversy Over FCC's Efforts to Improve Broadband Connectivity," *Energy, Utilities, Telecommunications and Transportation Newsletter*, Illinois State Bar Association (2021)

"The Future of For-Profit Online Charter Schools," *Labor and Employment Law Quarterly*, American Bar Association (2016)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA and PIPA, The Learning Technology Center of Illinois SecurED Schools Annual Conference (January 2022)



PRACTICE AREAS

Commercial Transactions
Construction Law
Labor & Employment
Real Estate Development

EDUCATION

J.D., University of
Minnesota Law School

B.A., University of
Minnesota – Twin Cities;
Presidential Scholar

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

PHILIP H. GERNER III

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Phil Gerner counsels and represents school districts and community colleges in collective bargaining negotiations, union representation petitions and IELRB proceedings, teacher evaluations, remediations and dismissals, employee discipline and discharge issues, labor contract administration and grievance arbitration and other labor and employment issues. Phil has represented school districts and community colleges in numerous labor arbitrations, unfair labor practice hearings, tenured teacher dismissals and IDHR and EEOC proceedings. Phil has successfully handled a number of appellate court appeals on issues of significance for educational employers, including short-term employee bargaining unit exclusion standards, teacher evaluation plan bargaining obligations and RIF/seniority rights of tenured teachers.

Phil is a frequent presenter for IASB, IASA, Illinois ASBO, ICCTA and other educational employer associations on a full range of labor and employment issues, including collective bargaining negotiations, teacher evaluation and remediation, school administrator employment contracts, employee discipline and discharge, and public employee speech and concerted activity issues.

AWARDS

Illinois Leading Lawyer, Employment and School Law, 2004-2012

RECENT PUBLICATIONS

"Collective Bargaining During COVID-19" IASA Leadership Matters Magazine (2021)

"Hot Topics in Collective Bargaining," IASB.COM, IASB (2014)

Contributing author, "Labor Relations: Contract Administration Including ULPs," Illinois School Law, IICLE (2005, 2010 and 2012)

"Collective Bargaining Implications of the Performance Evaluation Reform Act of 2010 (SB 315) and the Education Reform Act (SB 7)," UPDATE Magazine, Illinois ASBO (2011)

RECENT PRESENTATIONS

Legal Issues Regarding Mandatory Employee Vaccinations, Illinois Association of School Personnel Administrators Webinar (September 2021)

COVID-19 HR Webinar: Vaccine Mandate for Staff, 2021 Illinois Association of School Business Officials Conference (September 2021)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation

EDUCATION

J.D., Washington
University School of Law

B.A., *cum laude*, St.
Lawrence University

ADMITTED TO PRACTICE

U.S. District Court for the
Central District of Illinois

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

THOMAS C. GARRETSON

PARTNER, CHICAGO

312.332.7760

tgarretson@robbins-schwartz.com

Tom advises and counsels employers in the public and private sectors in all areas of labor and employment law, including workplace investigations, disciplinary action, leaves and accommodation requests, contract disputes, wage and hour issues, and general human resources compliance. Tom has significant experience working closely with management in traditional labor matters, including union organizing, collective bargaining and contract negotiations, grievances, and unfair labor practices. Tom also defends employers in state/federal court and before administrative agencies involving claims of discrimination, harassment, retaliation, and breach of contract.

Prior to joining Robbins Schwartz, Tom worked as a labor relations attorney for the Cook County Health System. During law school, Tom interned with the U.S. Equal Employment Opportunity Commission's Enforcement Unit.

RECENT PUBLICATIONS

"Seventh Circuit Certifies Question to Illinois Supreme Court Regarding When BIPA Claim Accrues" *Employment and Labor Law Flashpoints*, IICLE (2021)

"Get off my Property: SCOTUS Limits Union Access to Employer Premises," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Recent Department of Labor Opinion Letters: Pay for Training and Travel," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Seventh Circuit: Jury, Not Judges, Must Decide Coach's Sex Discrimination Claim," *Employment and Labor Law Flashpoints*, IICLE (2020)

"Unions Strike Back Through Amendments to Illinois Public Labor Acts," *Employment and Labor Law Flashpoints*, IICLE (2020)

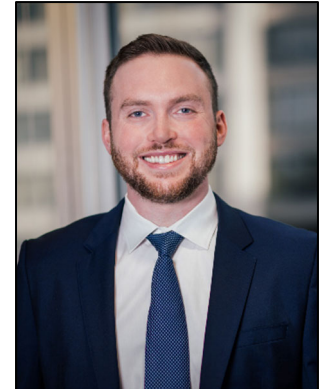
"Heading Into the New Year with New Employment Laws," *Employment and Labor Law Flashpoints*, IICLE (January 2019)

RECENT PRESENTATIONS

Never a Dull Moment - Case Studies and Tales from HR, IASPA Annual Conference (January 2022)

Updates from the Department of Human Rights, IAPD/IPRA Soaring to New Heights Conference (January 2022)

The Nuts and Bolts of Employee Leave Rights Under the FMLA, ADA, and Illinois Law, IAPD/IPRA Soaring to New Heights Conference (January 2022)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., Chicago-Kent College of Law

B.A., *with honors*,
Michigan State University

ADMITTED TO PRACTICE

U.S. District Court for the Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Mid-Term and Successor Bargaining Trends Post-COVID-19, IASA Legal Workshop (December 2021)

Employee Misconduct Investigations and Discipline During a Pandemic, IASPA Annual Conference (January 2021)

