



**RESOLUTION OF THE
LOUISIANA BOARD OF LEGAL SPECIALIZATION
TO APPROVE REVISED EMPLOYMENT LAW STANDARDS
AND EMPLOYMENT LAW EXAM TOPICS**

WHEREAS, the Louisiana Board of Legal Specialization is empowered under Section 3.1C of the Plan of Legal Specialization to make recommendations to the House of Delegates of the Louisiana State Bar Association with respect to reasonable and non-discriminatory standards concerning education, experience, proficiency and other relevant matters for granting certificates of special competence to lawyers in defined and designated fields of law; and

WHEREAS, the Supreme Court of Louisiana established the Louisiana Board of Legal Specialization (“LBLS”) in 1993 to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law; and

WHEREAS, the Supreme Court of Louisiana included the specialty of Employment and Labor Law in the original Louisiana State Bar Association Plan of Legal Specialization; and

WHEREAS, on September 12, 2014, the Supreme Court of Louisiana approved the separation of Employment Law and Labor Law into two specializations after the House of Delegates and Board of Governors approved the two separate specializations at their meetings on June 5 and 6, 2014 without any opposition; and

WHEREAS, a public hearing was held on April 13, 2016 in New Orleans for the purpose of providing an opportunity for board certified specialists and interested members of the bar to comment on the proposed Louisiana Board of Legal Specialization Employment Law Standards; and

WHEREAS, at a meeting of the Louisiana Board of Legal Specialization held on December 12, 2016, it was unanimously agreed that a recommendation be made to the House of Delegates of the Louisiana State Bar Association to adopt the standards for Employment Law; and

WHEREAS, the House of Delegates approved the Louisiana Board of Legal Specialization Employment Law Standards at their meeting on January 21, 2017, without debate; and

WHEREAS the Employment Law Standards were suspended by the House of Delegates at their meeting on January 20, 2018, and the Louisiana Board of Legal Specialization was requested to conduct further study on the Employment Law Standards; and

WHEREAS, four public hearings were held on August 16, 2018, in New Orleans; October 3, 2018, in Baton Rouge; February 12, 2019, in Lafayette; and April 2, 2019 in Shreveport for the purpose of providing an opportunity for board certified specialists and interested members of the bar to comment on the proposed Louisiana Board of Legal Specialization Employment Law Standards; and

WHEREAS, interested members of the bar submitted written comments on the proposed Louisiana Board of Legal Specialization Employment Law Standards in 2018 and through April 24, 2019; and

WHEREAS, the Louisiana Board of Legal Specialization Employment Law Advisory Commission considered the comments made at the public hearings and the written comments and made revisions to the Employment Law Standards and created Employment Law Exam Topics; and

WHEREAS, four Resolutions were filed with the House of Delegates to suspend implementation of Labor Law Standards and Employment Law Standards, and after opposition from the Louisiana Board of Legal Specialization and other interested parties, the House of Delegates voted against two Resolutions to suspend implementation of Labor Law Standards and voted against one Resolution to suspend implementation of Employment Law Standards, and a fourth Resolution to suspend implementation of Employment Law Standards was withdrawn, at the House of Delegates virtual meeting on January 23, 2021;

WHEREAS, the Louisiana Board of Legal Specialization continued with its review and revision of the Employment Law Standards and the Employment Law Exam Topics and set a period from April 1 until April 26, 2021 during which board certified specialists and interested members of the bar could comment on the revised Employment Law Standards and Exam Topics; and

WHEREAS, the Employment Law Advisory Commission considered the comments received and made additional revisions to the Employment Law Standards; and

WHEREAS, a determination was made by the Louisiana Board of Legal Specialization Employment Law Advisory Commission that the following amendments to the Employment Law Standards are in order to revise Section I (C); Section II (A)(2), (3), (4) and (7); Section III (A)(3) and (B)(1); and Section VI (B) of the Employment Law Standards, considering the comments made at the public hearings and the written comments received, as follows:

Section I. DEFINITIONS

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- C. Employment Law is defined as the handling of all matters arising from the relationships between employers and employees or independent contractors, excluding workers' compensation matters other than retaliatory discharge issues. The practice encompasses all forms of advice, guidance, and counseling as well as litigation, negotiation, arbitration, mediation and other forms of alternative dispute resolution before state and federal tribunals involving public or private employment-related statutes, employment-related torts, employment-related contracts, and/or discrimination matters, including but not limited to:

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- Employment-related torts, including trade secret and unfair trade practice matters, negligent hiring or supervision, and Computer Fraud and Abuse Act;
- Employment-related privacy issues, including drug testing, polygraph testing, Electronic Communications Privacy Act, and Stored Communications Act;

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Section II. BASIC REQUIREMENTS

A. Application

Applicants must at the time of initial application for certification:

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2. Have a minimum of five (5) years of actual practice of law on a full time basis preceding the year of application;
3. Certify under oath that during 60 of the 84 months immediately preceding the year of application they have devoted a minimum of 25% of a full-time work schedule in the practice of law in the field of Employment Law as defined in Section I, C.
4. The Advisory Commission must receive on behalf of an applicant, on a form furnished by the Louisiana Board of Legal Specialization, a minimum of five (5) reference statements from practicing attorneys who can attest to the applicant's competence in the specialty field of Employment Law. Of the five (5) references, at least one (1) must be from a Board Certified Employment Law Specialist.¹ These submissions shall be subject to the limitations outlined in Rule 8.4 of the Rules;

¹ The requirement that one (1) of the five (5) references be from a Board Certified Employment Law Specialist may be waived by the LBLs Board until there are a sufficient number of Board Certified Employment Law Specialists.

...

7. Obtain by December 31 of the year of application a minimum of 15 hours of continuing legal education (CLE) in the field of Employment Law. All CLE credits of an applicant must be approved by the Mandatory Continuing Legal Education Committee ("MCLE Committee") and the Advisory Commission. CLE earned in prior years may not be used to satisfy the 15 hour requirement within the year of application. An applicant will not qualify for the specialization CLE exemption under Rule 7.10 of the Rules in the year of application.

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Section III. STANDARDS FOR CONTINUING LEGAL EDUCATION PROGRAMS

A. Program Development and Presentation

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3. Program content should be current and related to employment law subjects. Employment law specialization CLE credit will be granted for an entire program if 50% or more of the program is devoted to employment law subjects. If the program in its entirety does not meet the 50% requirement, individual sessions within the program will qualify for employment law specialization credit if 50% or more of the content of the session is devoted to employment law.

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B. Program Qualification

1. General Rule

Continuing legal education programs must be approved by the Mandatory Continuing Legal Education Committee ("MCLE Committee") before approval can be granted by the Advisory Commission. Mandatory Continuing Legal Education ("MCLE") is administered by the Louisiana State Bar Association (hereinafter the "LSBA"). The overriding consideration in determining if a specific program qualifies as acceptable continuing legal education is that it be a formal program of learning which contributes directly to the professional competence of an attorney who specializes in the field of Employment Law.

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Section VI. COMPLIANCE

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A specialization transcript may be obtained from the Louisiana Board of Legal Specialization website located at <https://www.lsba.org/Specialization/>.

...

WHEREAS, the Louisiana Board of Legal Specialization has unanimously agreed that a recommendation be made to the House of Delegates of the Louisiana State Bar Association to adopt the revised Employment Law Standards and the Employment Law Exam Topics, copies of which are attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED that:

This Resolution shall be presented to the House of Delegates of the Louisiana State Bar Association; and

FURTHER, be it resolved that the Louisiana Board of Legal Specialization recommends to the House of Delegates of the Louisiana State Bar Association that the revised Employment Law Standards and the Employment Law Exam Topics be adopted and approved.

May 12, 2021
Lafayette, Louisiana

Respectfully submitted,



Robert E. Rowe, Chair
Louisiana Board of Legal Specialization

APPROVED
HOUSE OF DELEGATES
JUNE 10, 2021
DESTIN, FL

APPROVED
BOARD OF GOVERNORS
JUNE 11, 2021
DESTIN, FL



LOUISIANA BOARD OF LEGAL SPECIALIZATION EMPLOYMENT LAW STANDARDS

Pursuant to the authority vested in the Louisiana Board of Legal Specialization (the “Board”) by the Supreme Court of Louisiana, the Board, on the recommendation of the Employment Law Advisory Commission (the “Advisory Commission”), prescribes the following standards and requirements for board certification in Employment Law in accordance with the Plan of Legal Specialization (the “Plan”) and the Rules and Regulations of the Louisiana Board of Legal Specialization (the “Rules”).

Section I. DEFINITIONS

- A. The practice of law means full-time legal work performed for the purpose of rendering legal advice or legal representation to the general public, private employers, or governmental agencies.
- B. Full time shall be defined as working a minimum of 35 hours per week.
- C. Employment Law is defined as the handling of all matters arising from the relationships between employers and employees or independent contractors, excluding workers’ compensation matters other than retaliatory discharge issues. The practice encompasses all forms of advice, guidance, and counseling as well as litigation, negotiation, arbitration, mediation and other forms of alternative dispute resolution before state and federal tribunals involving public or private employment-related statutes, employment-related torts, employment-related contracts, and/or discrimination matters, including but not limited to:
 - Equal Employment Opportunity, including Title VII, LEDL, ADAAA, PDA and ADEA;
 - Wage and Hour and leave matters including FLSA, FMLA, Louisiana’s maternity leave law, USERRA, Louisiana’s MSRA, WARN Act, Equal Pay Act, Louisiana’s wage law, OFCCP, employment status, and unemployment compensation matters;
 - Employment-related torts, including trade secret and unfair trade practice matters, negligent hiring or supervision, and Computer Fraud and Abuse Act;
 - Employment-related privacy issues, including drug testing, polygraph testing, Electronic Communications Privacy Act, and Stored Communications Act;
 - Employment contracts, including non-competition and non-solicitation provisions;
 - Pre-employment matters and employment practices, policies and procedures;
 - Employment-related civil rights claims;
 - Whistleblower and non-EEO retaliation claims;
 - Occupational Safety and Health (except worker’s compensation and/or LHWCA claims or proceedings).

The practice of law dealing with ERISA (such as employee benefits and group benefits), COBRA, social security law, immigration, bankruptcy and administrative proceedings may, under proper circumstances, constitute the practice of Employment Law within the meaning of this section.

- D. Certification as a specialist shall be effective the date the Board authorizes recognition and shall remain effective for five (5) years from January 1 of the year of recognition.

Section II. BASIC REQUIREMENTS

A. Application

Applicants must at the time of initial application for certification:

1. Be an active member in good standing of the Louisiana State Bar Association;
2. Have a minimum of five (5) years of actual practice of law on a full time basis preceding the year of application;
3. Certify under oath that during 60 of the 84 months immediately preceding the year of application they have devoted a minimum of 25% of a full-time work schedule in the practice of law in the field of Employment Law as defined in Section I, C.
4. The Advisory Commission must receive on behalf of an applicant, on a form furnished by the Louisiana Board of Legal Specialization, a minimum of five (5) reference statements from practicing attorneys who can attest to the applicant's competence in the specialty field of Employment Law. Of the five (5) references, at least one (1) must be from a Board Certified Employment Law Specialist.¹ These submissions shall be subject to the limitations outlined in Rule 8.4 of the Rules;
5. Consent to a confidential inquiry by the Board and/or the Advisory Commission, directed to any person who serves as a reference for the applicant, and to other persons regarding the applicant's competence and qualifications to be recognized as an Employment Law Specialist. This inquiry and review shall consider information furnished by references and other information that the Advisory Commission deems relevant to whether the applicant has sufficient competence and proficiency handling the usual matters of Employment Law. This information may include the applicant's work product, ethics, reputation, professionalism, or such other criteria that the Advisory Commission deems appropriate to consider in reaching its recommendations;
6. Comply with the rules and regulations established by the Board as they relate to release of disciplinary action information;
7. Obtain by December 31 of the year of application a minimum of 15 hours of continuing legal education (CLE) in the field of Employment Law. All CLE credits of an applicant must be approved by the Mandatory Continuing Legal Education Committee ("MCLE Committee") and the Advisory Commission. CLE earned in prior years may not be used to satisfy the 15 hour requirement within the year of application. An applicant will not qualify for the specialization CLE exemption under Rule 7.10 of the Rules in the year of application.
8. Maintain professional liability insurance in the minimum amount of \$500,000. The policy must be offered by a company reasonably acceptable to the Board. Evidence of insurance shall be provided with the application.

¹ The requirement that one (1) of the five (5) references be from a Board Certified Employment Law Specialist may be waived by the LBLS Board until there are a sufficient number of Board Certified Employment Law Specialists.

9. Take and pass a written examination.
10. Certify under oath to having met these requirements.

B. Maintenance

Those bar members certified in the Employment Law specialty must satisfy the following requirements to maintain their certifications:

1. Be an active member in good standing of the Louisiana State Bar Association;
2. Certify under oath, on a form provided by the Board, that they engage in the actual practice of law on a full time basis;
3. Certify under oath, on a form provided by the Board, that they have devoted a minimum of 25% of a full time work schedule in the practice of law annually in the field of Employment Law, as defined in Section I, C herein.
4. During each year of certification, must attend a minimum of 15 hours of approved Employment Law continuing legal education programs that comply with Section III below and the Supreme Court of Louisiana Rules for Continuing Legal Education. Up to eight (8) hours of approved Employment Law specialization CLE earned in excess of the 15 hour minimum required per year will be permitted to carry forward to the subsequent year, but may not be carried forward from the application year.
5. Maintain professional liability insurance in the minimum amount of \$500,000, unless waived for good cause by the Board. The policy must be offered by a company reasonably acceptable to the Board. Proof of insurance shall be provided annually with payment of the annual dues and upon request.
6. Pay all fees required by the Rules.

C. Recertification

1. Recertification as a Board Certified Employment Law Specialist shall be required every five (5) years from the date of certification or recertification, as the case may be.
2. Each Board Certified Employment Law Specialist shall present an application every five (5) years, on a form furnished by the Board, certifying that he or she has met the requirements of Section II B above.

Section III. STANDARDS FOR CONTINUING LEGAL EDUCATION PROGRAMS

A. Program Development and Presentation

1. The program should contribute to the professional competence of a Board Certified Employment Law Specialist and should be open for attendance by all such attorneys;
2. Programs should be developed by individual(s) qualified in the subject matter;

3. Program content should be current and related to employment law subjects. Employment law specialization CLE credit will be granted for an entire program if 50% or more of the program is devoted to employment law subjects. If the program in its entirety does not meet the 50% requirement, individual sessions within the program will qualify for employment law specialization credit if 50% or more of the content of the session is devoted to employment law.
4. Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation (if required), and teaching methods to be used;
5. Instructors or discussion leaders should be qualified with respect to program content and teaching method used;
6. Program sponsors should encourage participation only by individuals with appropriate education and/or experience;
7. The program sponsor must maintain registration and/or attendance records and such other records as may be necessary to substantiate compliance of the program with the above criteria.

B. Program Qualification

1. General Rule

Continuing legal education programs must be approved by the Mandatory Continuing Legal Education Committee ("MCLE Committee") before approval can be granted by the Advisory Commission. Mandatory Continuing Legal Education ("MCLE") is administered by the Louisiana State Bar Association (hereinafter the "LSBA"). The overriding consideration in determining if a specific program qualifies as acceptable continuing legal education is that it be a formal program of learning which contributes directly to the professional competence of an attorney who specializes in the field of Employment Law.

2. Program Approval

Programs shall be approved on a case-by-case basis by the Advisory Commission provided the program meets the general standards set forth in Section III, A and B1.

No credit shall be awarded for firm meetings or "in house" CLE programs.

Section IV. **OTHER METHODS OF EARNING SPECIALIZATION CLE CREDIT**

A. General Rules

1. Any other method of earning specialization CLE credit must be approved by MCLE before approval can be granted by the Advisory Commission, who shall then consider each request on a case-by-case basis.
2. All credit earned shall be calculated by MCLE in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education.

3. All requests for CLE credit shall be submitted to MCLE and the Advisory Commission within a reasonable period of time but no later than January 31 of the calendar year following the activity for which CLE credit is being sought.

B. Teaching

1. CLE credit may be awarded for teaching an approved CLE program pertinent to the specialization subject matter. If an individual teaches at a program and attends the balance of the program, then he or she shall receive credit for that portion of the program he or she did not teach in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education. No credit will be given for repetitious presentations of a program.
2. Teaching of academic courses in Employment Law in a law school or other graduate level program presented by a recognized professional educational association may earn CLE credit.
3. CLE credit may be awarded for teaching an Employment Law course at any seminar, provided the presentation meets all criteria contained in Section III, A and B, other than Section III, A3.

C. Writing

CLE credit may be awarded for writing articles and other publications directed primarily to attorneys specializing in the field of Employment Law and published in professional periodicals and publications. Credit will not be awarded for authorship of articles and other publications until the writing has been published.

D. Louisiana State Law Institute Committee meetings

CLE credit may be awarded for attendance at Louisiana State Law Institute Committee meetings pertinent to the field of Employment Law.

E. Pro Bono

CLE credit may be awarded for providing uncompensated pro bono legal representation related to an Employment Law matter, as defined in Section I C herein, to an indigent or near-indigent client or clients. CLE credit shall not be granted until the representation has been assigned, completed and verified by the assigning organization as defined by and in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education.

Section V. CREDIT HOURS GRANTED

- A. Only credit hours or the equivalent (and not hours dedicated to preparation) will be counted.
- B. One (1) hour of continuing legal education credit will be awarded for each 60 minutes of instruction. Where the program is several periods of instruction with intervening breaks, the number of minutes of instruction is summed for the entire program for which the credit is claimed and then the total number of minutes is divided by 60.
- C. A participant who is not present for an entire program may claim credit only for the portion he or she attended.

- E. The credit hours assigned to a program by MCLE will be accepted by the Advisory Commission unless the hours are clearly inaccurate under the standards for computing credit in accordance with the Supreme Court of Louisiana Rules for Continuing Legal Education.

Section VI. COMPLIANCE

A. General Rule

Specialization CLE credit hours will be computed on a calendar year basis and all attendance information for CLE credits earned shall be delivered to MCLE by January 31 of the following year.

B. Notification

The Board will notify each non-compliant Board Certified Employment Law Specialist of the credit hours he or she has earned during the preceding calendar year. The specialist shall have 30 days from the date of notification to appeal the award of credit hours.

A specialization transcript may be obtained from the Louisiana Board of Legal Specialization website located at <https://www.lsba.org/Specialization/>.

Section VII. ADMINISTRATION

The Advisory Commission may delegate its responsibility to rule on all matters pertaining to Employment Law CLE requirements to a committee consisting of at least three (3) Advisory Commission members. Any such committee shall report to the Advisory Commission, and the Advisory Commission shall, at all times, retain the right to review, modify, or supersede the decisions of any such committee.



LOUISIANA BOARD OF LEGAL SPECIALIZATION EMPLOYMENT LAW EXAM TOPICS

NOTE: ***NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. APPLICANTS WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM, UNLESS OTHERWISE SPECIFIED.***

1. Employer-Employee Relations

- a. Discrimination in Employment
 - (1) Age Discrimination in Employment Act of 1967
 - (2) Americans with Disabilities Act of 1990, as amended by the ADAAA of 2008
 - (3) Civil Rights Act of 1991
 - (4) Lilly Ledbetter Fair Pay Act of 2009
 - (5) Older Workers Benefit Protection Act
 - (6) Pregnancy Discrimination Act
 - (7) Section 1981 of the Civil Rights Act of 1866
 - (8) Louisiana Employment Discrimination Law
 - (9) Title VII of the Civil Rights Act of 1964
- b. Employee Privacy Rights
 - (1) Drug testing
 - (2) Polygraph Protection Act
 - (3) Electronic Communications Privacy Act/Stored Communications
 - (4) Invasion of privacy
- c. Employment-Related Torts
 - (1) Negligent hiring
 - (2) Negligent supervision
 - (3) Defamation
- d. Employment Relations
 - (1) Arbitration agreements
 - (2) Employment at will
 - (3) Fair Credit Reporting Act and retaliation claims

2. Various Statutory Duties Imposed on Employers

- a. Federal Laws
 - (1) Defend Trade Secrets Act of 2016

- (2) Equal Pay Act of 1963
- (3) Office of Federal Contracts Compliance Programs regulations
- (4) Fair Labor Standards Act of 1938
- (5) Family and Medical Leave Act of 1993
- (6) Federal Arbitration Act
- (7) Occupational Safety and Health Act of 1970
- (8) Rehabilitation Act of 1973
- (9) USERRA
- (10) Vietnam Veterans Readjustment Assistance Act
- (11) Whistleblower and Anti-Retaliation Provisions Under the Sarbanes Oxley Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, and the Affordable Care Act
- (12) Worker Adjustment and Retraining Notification Act

b. Louisiana State Laws

- (1) Louisiana Employment Discrimination law
- (2) Timely Wage Payment provisions
- (3) Non-compete statute
- (4) Military Service Relief Act
- (5) Uniform Trade Secrets Act
- (6) Whistleblower and Anti-Retaliation statutes
- (7) Unfair Trade Practices Act
- (8) Pregnancy Leave laws
- (9) Employee Drug Testing laws
- (10) Louisiana Unemployment Compensation laws