

Robbins Schwartz

Higher Education Title IX Coordinator Training Webinar

December 9, 2020

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Title IX Coordinator Training for Higher Education

Presented By: Kevin P. Noll and Amanda E. Campo
December 9, 2020

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Title IX Coordinator

- "...[A]t least one employee to coordinate [the school's] efforts to comply with its responsibilities under [Title IX]."
- What does this entail?

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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

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Overview

- **Part I:** Title IX Coordinator Administrative Duties
- **Part II:** Grievance Procedure Pre-Investigation
 - Reviewing and Analyzing the Allegations
 - Offering and Coordinating Supportive Measures
 - Formal Complaint
- **Part III:** Grievance Procedure: Investigation and Beyond
 - Role in the Investigation
 - Coordinating Informal Resolution
 - Role at the Hearing
 - Notice of Appeal
 - Implementing Remedies

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Part I: Administrative Duties



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Required Postings/ Notifications

- Name or title and contact information
 - Published on website, and handbook or catalog
- Respond to inquiries regarding application of Title IX
- Training materials

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Monitoring

- Monitor students' participation in athletics and across academic fields to ensure that sex discrimination is not causing any disproportionate enrollment based on sex, or otherwise negatively affecting a student's access to equal educational opportunities
- Survey the school climate and coordinate the collection and analysis of information from that survey
- Promote an educational and employment environment which is free of sex discrimination and gender bias

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Training and Planning



- Address patterns or systemic problems revealed by Title IX reports or complaints;
- Track Title IX-specific position vacancies to ensure appropriate staffing;
- Ensure that appropriate policies and procedures are in place for working with law enforcement and coordinating services with local victim advocacy organizations and services providers, including rape crisis centers.

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Training

- Provide adequate training to students, faculty, and staff on Title IX issues
- Maintain records of all such training

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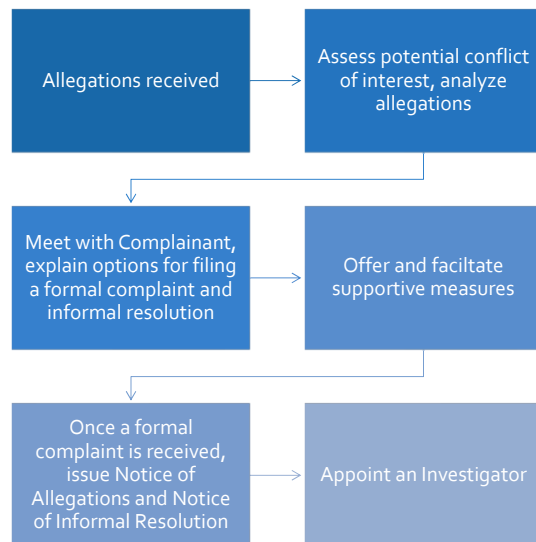
Title IX Complaints

- Maintain all documents and records related to Title IX investigations
- Appropriately analyze allegations of sexual harassment
- Conduct and oversee Title IX complaint responses
 - Partner with HR where employee involved
 - Coordinate supportive measures
 - Document outcome and implement remedies

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Part II: Grievance Procedure Pre- Investigation



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Review and Analyze Allegations



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Allegations

- You are made aware of allegations of sexual harassment.
- Now what?

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Identify Potential Conflict of Interest

- The Title IX regulations require that a Title IX Coordinator “...not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”



Conflict of interest

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Potential Conflict of Interest

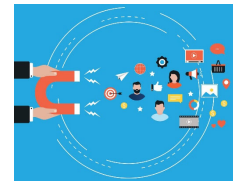
- **Key question:** Does the Title IX Coordinator’s prior or existing relationship with or knowledge of a party prevent the Title IX Coordinator from serving impartially?
 - If yes: Recuse yourself
 - Remember: A Title IX Coordinator’s conflict of interest which affected the outcome is a permissible basis for appeal

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Gather Information and Review Allegations

- Review the information you have
- Contact the Complainant (person alleged to be the victim) if you need more information
- Review the allegations



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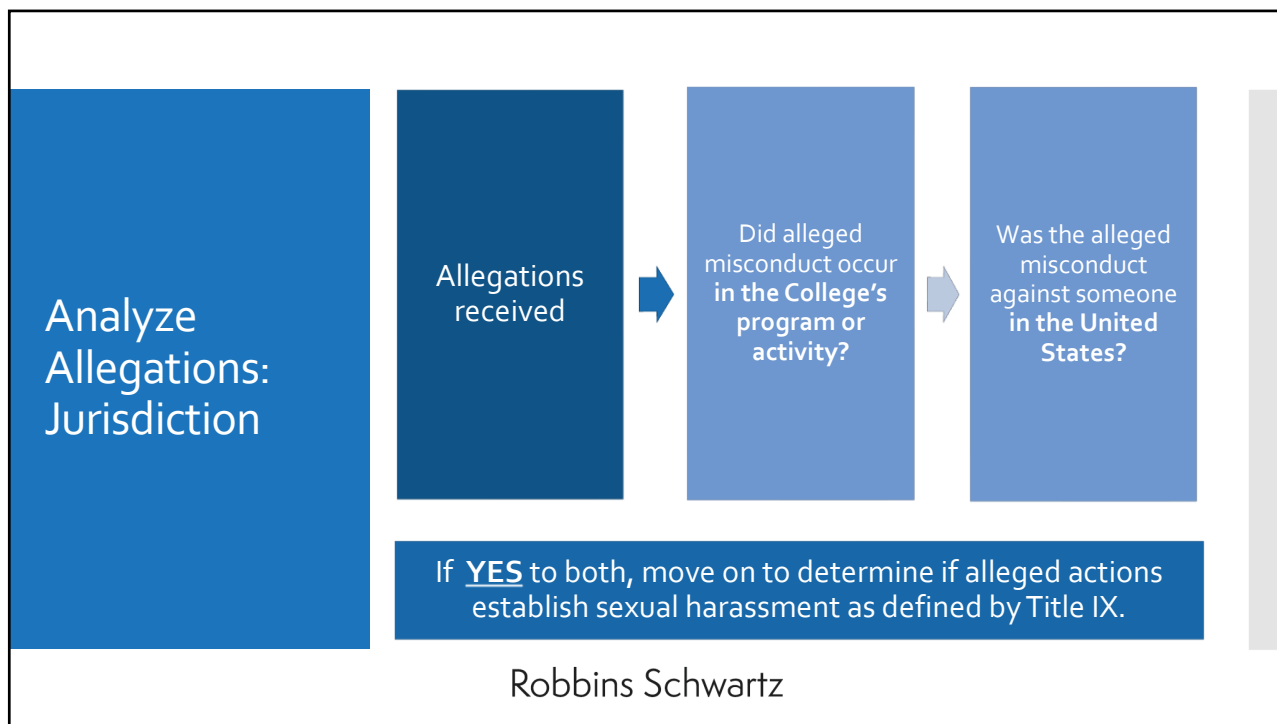
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Analyze Allegations

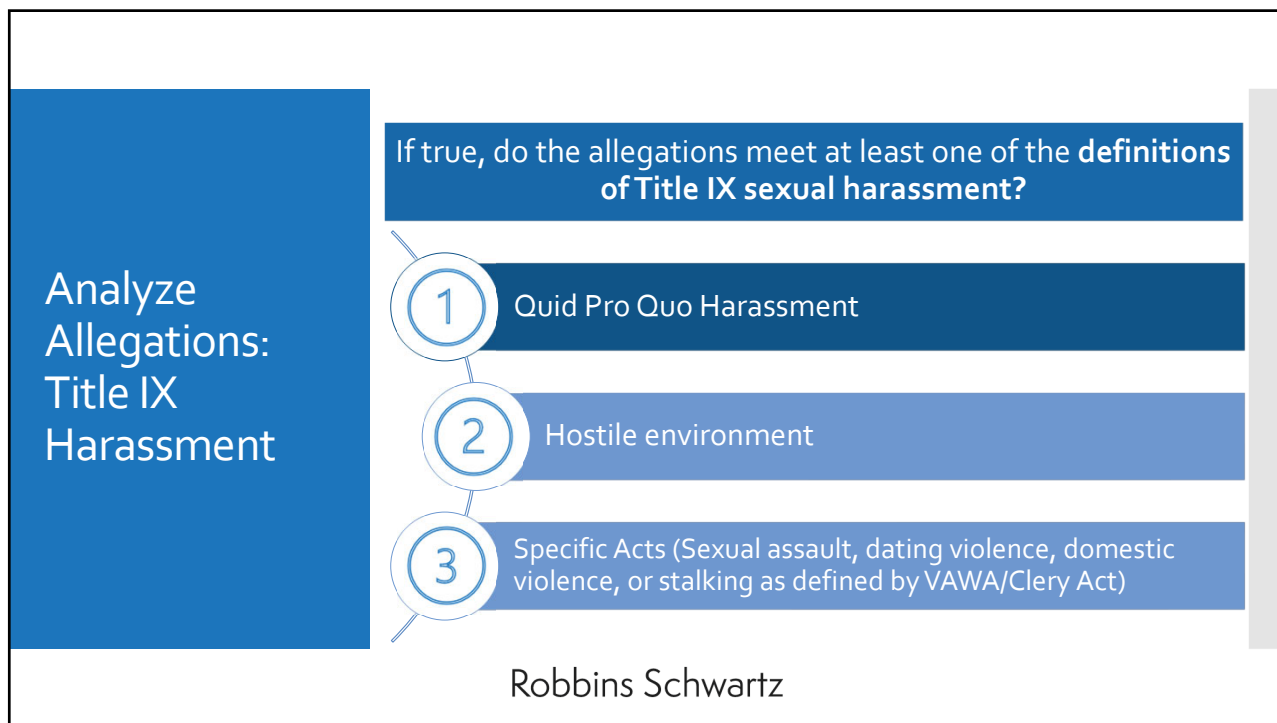
- Upon reviewing allegations, analyze whether they should be processed under Title IX policy and procedures, or another policy
- **Tip:** Start with jurisdiction
- Analyze whether allegations (if true) would constitute sexual harassment under Title IX

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Analyze Allegations: Title IX Harassment

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Quid Pro Quo Harassment

"My math professor offered extra credit if I sent him inappropriate sexual pictures of myself."

2

Hostile environment

"My classmate frequently made sexual comments and gestures at me, both during and outside of class; I stopped going to class to avoid him."

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Specific Acts:

"The athletic trainer touched me in a sexual manner even though I told her to stop."

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Analyze Allegations: Scenario 1

- You receive an email from a Psychology professor detailing a conversation she had with a student. The student, Alex, claimed that another student in the class, Sam, was making inappropriate sexual remarks in a private Zoom chat during a remote class session.
- Sam also allegedly messaged Alex on Instagram after class, and said, "Can't wait till we are back on campus... I'll have a seat saved for you, on my lap."
- How do you proceed?

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Analyze Allegations: Scenario 2

- A student, Charlie, comes to you to report that Professor X gave them a hug unexpectedly at an on-campus school sponsored event.
- How do you proceed?

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Analyze Allegations

If some or all of the allegations meet the Title IX jurisdiction and harassment threshold:

Schedule initial meeting with the Complainant

Issue Notice Letter to Complainant of Policies Applicable to Investigation of Allegations of Sexual Harassment for any allegations that do not meet Title IX requirements

If none of the allegations meet the Title IX threshold:

Issue Notice Letter to Complainant of Policies Applicable to Investigation of Allegations of Sexual Harassment

Follow applicable Policy and Procedures for investigating non-Title IX harassment.

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Formal Complaint



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Initial Interview

- Schedule a meeting with the Complainant
- Explain the potential courses of action
 - Formal Grievance Procedure
 - Informal Resolution*

**Remember that Informal Resolution is not available in student/staff claims*

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Supportive Measures

- Supportive measures
 - Schedule changes, counseling, dorm reassignment, leaves of absence, assignment extensions, etc.
 - **Key:** Non-punitive towards Respondent



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Coordinating Supportive Measures

- Contact appropriate personnel
 - Counselor, Registrar, etc.
- Make appropriate arrangements

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Supportive Measures: Scenario 1

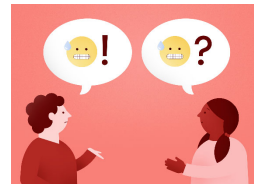
- Alex claimed that another student in the class, Sam, was making inappropriate sexual remarks in a private Zoom chat during a remote class session.
- Sam also allegedly messaged Alex on Instagram after class, and said, "Can't wait till we are back on campus... I'll have a seat saved for you, on my lap."
- Do you need to offer supportive measures?
- What types of supportive measures can you offer Alex?

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Supportive Measures: Scenario 2

- A student, Charlie, comes to you to report that Professor X gave them a hug unexpectedly at an on-campus school sponsored event.
- Do you need to offer supportive measures?



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Supportive Measures: Scenario 2

- Charlie calls you a week after visiting your office to tell you that Professor X asked for Charlie's cell phone number.
- Although Charlie said no, Professor X still was able to find the number and send Charlie a text asking, "Hey, dinner this weekend?"
- You re-evaluate the allegations and determine that this falls within Title IX jurisdiction.
- Do you need to offer supportive measures? If so, what?

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Emergency Removals

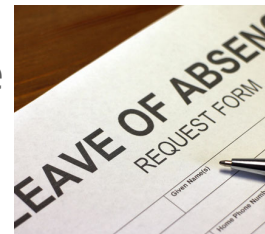
- Individualized safety and risk analysis determines an immediate threat to the physical health or safety of any student or other individual arising from allegations.
 - Applies to student Respondents
 - Issue notice prior to removal
 - Respondent must be allowed opportunity to challenge removal

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Administrative Leave

- Applies to employee Respondents
- Administrative leave throughout pendency of a grievance process
- Check applicable CBAs
- **Caution:** Length of leave



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Signing a Formal Complaint

- Once a formal complaint has been signed by Complainant, issue:
 - Notice Letter to Complainant/Respondent of Complaint Allegations
 - Notice Letter Regarding Informal Resolution*
- Both parties should receive notices simultaneously and within 10 business days of receipt of formal complaint.
- **Remember that Informal Resolution is not available in student/staff claims*

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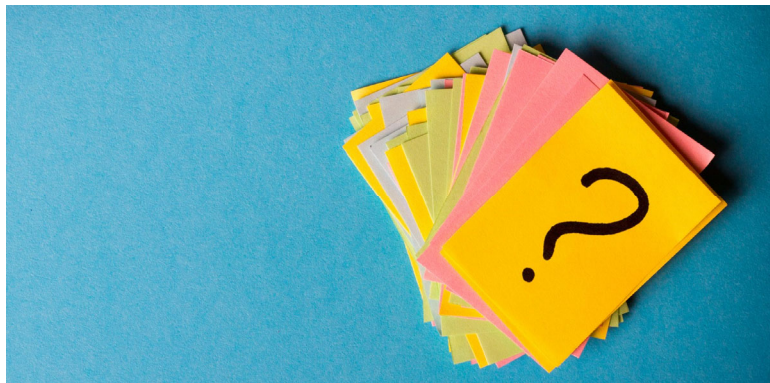
No Formal Complaint Signed

- If a Complainant decides against signing a formal complaint, a Title IX Coordinator may sign a formal complaint on their behalf.
- Use caution when making this decision.

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Part III: Grievance Procedure: Investigation and Beyond



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Role in Investigation

- Investigator should be appointed following receipt of a signed Formal Complaint
- Provide copies of any relevant documents
- Maintain all notices sent by Investigator
- Assist Investigator with witness and party contact and information

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Role in Investigation

- Stay apprised of all investigatory notices issued
- Assign Advisor if party does not have one
- Contact legal counsel if needed

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Coordinating Informal Resolution

- Informal resolution is a detour in the formal grievance process
- If parties agree, issue Consent to Participate in Informal Resolution
- Coordinate with Informal Resolution Facilitator, set up date and time for Resolution



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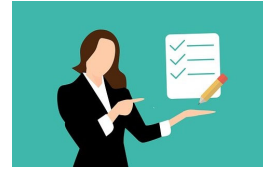
Returning to Grievance Process

- If a party withdraws consent, Informal Resolution Facilitator will refer complaint back to you
- At this time, process must be re-routed to wherever it was in the grievance process

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Role Pre-Hearing



- Appoint Hearing Officer
- Coordinate schedules of all appropriate Title IX personnel and notify them of Hearing
- Schedule hearing

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Role Pre-Hearing

- Send Notice of Hearing, Final Investigation Report, and Right to File Response to both parties at least 10 days prior to the hearing
- Appoint Advisor(s), if appropriate
- Notify legal counsel of attorney Advisor, if appropriate
- Attend the hearing

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Post-Hearing Role

- Make audio or audiovisual recording available to parties for inspection and review upon request
- Facilitate communication between Hearing Officer and Investigation
- Provide any relevant documents



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Appeals

- Both parties have the right to appeal any determination regarding responsibility, and any dismissal of a formal complaint or allegations
- Appeal must be submitted after party's receipt of written determination or dismissal notice

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Appeals



- Appeal should be based on one or more of the following grounds:
 - Procedural irregularity occurred
 - New evidence or information exists that could affect the outcome
 - Title IX Coordinator, Investigator, or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter
 - Sanction is disproportionate with the violation

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Appeals

- Upon receipt of an appeal request, Title IX Coordinator should promptly forward the appeal request to Appeals Determination Officer.
- Issue **Notice of Appeal** to party that did not submit request for appeal.

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Implementing Remedies

- Once a determination has been reached, and any timely appeals have been resolved, the Title IX Coordinator is responsible for implementing remedies;
- The Title IX Coordinator is also responsible for coordinating sanctions; include coordinating disciplinary action with the appropriate individuals, initiating the removal process for a club, adjusting class schedules, etc.

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Frequently Asked Questions



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FAQ

- What training do employees need if they don't have a Title IX role?
- What information do I need to publish online/in handbooks?

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Questions?



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Amanda practices in labor and employment law, with a focus on traditional labor. She counsels and represents public and private employers in labor relations, employee discipline, and federal and state employment discrimination matters under the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Illinois Human Rights Act, Title VII, and other anti-discrimination laws. Amanda also counsels employers regarding contract interpretation, grievance arbitrations, and unfair labor practices. She also assists educational institutions with compliance under Title IX and applicable state laws.

During law school, Amanda clerked at a firm representing public employers in labor matters, where she assisted with grievance and interest arbitrations.

RECENT PUBLICATIONS

Co-Authored "Social Media and Public Employers: Do You Need to "Share" a New Policy?," *Clark Baird Smith Newsletter: Ted Clark Legal Corner* (2019)



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Kevin's practice focuses in the area of labor and employment law. Kevin routinely counsels employers in all aspects of employment law including employee discipline, labor relations, and federal and state employment discrimination matters under the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Illinois Human Rights Act, Title VII and other federal and state anti-discrimination and wage laws. Kevin represents employers in a variety of venues including both federal and state court, as well as the U.S. Equal Employment Opportunity Commission and the Illinois Department of Human Rights.

Prior to joining Robbins Schwartz, Kevin represented individuals with employment matters, civil rights claims, and consumer protection litigation.

AWARDS

Illinois "Rising Star," by Super Lawyers Magazine (2017-2020)

RECENT PUBLICATIONS

"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

RECENT PRESENTATIONS

Updates from the DOL: New Developments for FMLA, FLSA, and IWPCA, IAPD/IPRA Soaring to New Heights Conference (January, 2020)

Is it ADA, FMLA, or Other Leave? Navigating the Murky Waters of Employee Leave Benefits, IAPD/IPRA Soaring to New Heights Conference (January, 2020)

Illinois Minimum Wage: Nutz and Bolts Overview, IGFOA Payroll Seminar (October 2019)



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