

The Unlikely Marriage of Unions and Tech Employees

By Scott P. Jang & Laura A. Pierson-Scheinberg

August 16, 2021

Meet the Authors



Scott P. Jang

Principal

(415) 394-9400

Scott.Jang@jacksonlewis.com



Laura A. Pierson-Scheinberg

(She/Her)

Principal

415-796-5408

Laura.PiersonScheinberg@jacksonlewis.com

Related Services

Employment Litigation

Labor Relations

National Compliance and Multi-State
Solutions

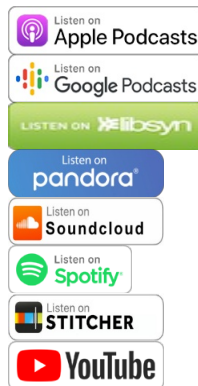
Technology

Details

August 16, 2021

Unions are successfully targeting workers in the technology industry, even as employees transition to a more remote workplace during the pandemic.

Jackson Lewis P.C. · The Unlikely Marriage of Unions and Tech Employees



Takeaways

The Unlikely Marriage of Unions and Tech Employees

Unions are successfully targeting workers in the technology industry, even as employees transition to a more remote workplace during the pandemic.

What Employers Need to Know

- Tech unionization has been on the rise since 2016.
- Triggers for increased union formation in the industry include:
 - Current political climate;
 - Increasingly remote workforce;
 - Unions effectively utilizing digital outreach; and
 - Increase in the number of tech workers.
- The most targeted tech workers are video gamers and software engineers.
- Unions have been effective at adapting their message, focusing on dignity, respect and compensation.
- Employers need to adapt in terms of how they think of unions, how unions fit in their workspace and how to address employee concerns that might otherwise result in organized activity.
 - Good management, training at all levels.
 - Constant assessment of the culture.

- There are a number of ways a tech company can be vulnerable to organizing. Employers should closely review different complaints to determine if they amount to a collective complaint about working conditions.
- Polling employees is a great vehicle to collect information, so long as you take the polling into account and adapt to the responses, employers have to be willing to address answers and make changes accordingly.
- Immediate steps employers can take to avoid union activity include:
 - Address legitimate employee issues;
 - Make sure supervisors are trained on how to be a good manager and on their obligations under the law; and
 - Do not retaliate against those employees who engage in organizing.

Transcript

Alitia ([00:06](#)):

Welcome to Jackson Lewis's podcast, We get work™. Focused solely on workplace issues everywhere and under any circumstances, it is our job to help employers develop proactive strategies, strong policies and business oriented solutions to cultivate a workforce that is engaged, stable and diverse. Our podcast identifies the issues dominating the workplace and its continuing evolution and helps answer the question on every employer's mind: how will my business be impacted?

Unions are successfully targeting workers in the technology industry, even as employees transition to a more remote workplace during the ongoing pandemic. On this episode of We get work™, we discuss the evolution of unionization in the tech space, how COVID-19 has affected unionizing activity by tech workers, warning signs of increasing organizing behavior and what employers should do in response to organizing behavior.

Our host today are Laura Pierson-Scheinberg and Scott Jang, principals in the San Francisco office of Jackson Lewis. Not only do they work just down the hall from each other, Laura, a leader in the firm's labor group and Scott co-leader of the firm's technology group, also increasingly see, contrary to what many might expect, that their respective practices and client's concerns overlap.

Laura and Scott, the question on everyone's mind today is what do I need to know, but never thought to ask about unions in the technology industry? And how will that impact my business?

Scott Jang ([01:45](#)):

Well, that's a good question, actually. I actually didn't never really thought that our worlds would actually collide, Laura. I mean, you deal with the traditional labor and I always think of that as kind of the very traditional business. I have Ford in my mind and here I am with the tech space and I don't really normally think about those worlds colliding, but that's probably not a fair idea and there probably is more intersection isn't there, Laura?

Laura Pierson-Scheinberg (02:10):

Well, we're seeing a lot more recently and I would say since maybe 2016, there's been a bit of a pitch, but it's really, really taken off in the recent years. I would say 2019 in particular, that's when the Game Workers of America formed and they formed a partnership with the Communication Workers of America to form this thing called CODE. And it's a union that's actually focused primarily on the tech space and they've had a lot of recent success in that regard.

So unions organizing tech, actually isn't as foreign as you may think. They've been doing it for decades, they just haven't been all that successful about it. But I think there's a perfect storm brewing right now that really is allowing that to get a better hold and take off.

Scott Jang (02:59):

And what do you think are kind of the impetuses for this new focus of union organizing in tech? It sounds like there is some recent success. Anything about modern day or the evolution of the tech industry that's kind of lending itself towards this resurgence in union organizing activity?

Laura Pierson-Scheinberg (03:20):

Absolutely. So I think there's a perfect storm going on here. I mean, just look at our political climate that we're in. For the very first time, we have Biden coming out and supporting unions in speeches and campaigns, et cetera. Then at the same time, you have the remote workforce increasing. That also had a turbo boost from COVID, but before that, we had that. And then in addition to that, you have unions getting better at digital organizing, meaning that they don't need the physical workspace to organize. And that's the way that tech workers generally work.

And as we look at the evolution, even looking 10, 20 years back, the tech workspace is growing more as technology evolves, so do the amount and number of tech workers in the workplace.

Scott Jang (04:08):

That is interesting. Is there any particular area in the tech space? Are we talking about certain subsets of the tech industry that have lended themselves to union organizing activity? Are we seeing that mostly pretty much a broad spectrum of the tech industry itself?

Laura Pierson-Scheinberg (04:27):

I think you're seeing it both. So you're seeing it in tech companies that have brick and mortar facilities. They're organizing sort of the old fashioned way, these huge, huge companies that have been targeted recently. But at the same time, in the digital workspace, there are two really tech targeted audiences that you see a lot of activity on.

One is video gamers, the people who create video games, and just software

engineers generally. And that's really sort of the, what I see, as a more unique peak as compared to the brick and mortar. You expect that in digital companies, tech companies will have, for example, warehouses, and whenever you have warehouses, call centers, et cetera, you're going to have that opportunity for traditional union organizing.

But what I'm seeing a unique peak on, is the digital reach out. There's no more paper, authorization card, and that's how you generally gain union support in the old fashioned way. They're all done digitally. There are Zoom meetings, as opposed to meet up at the local bar or cookout to gain support. They're doing it through social justice and social awareness issues. They're creating, whether it be rallies or talks or that kind of thing that are sponsored by unions, and they're getting just a different audience. It's a different target audience. And unions are evolving in a way that they are looking like the group that they're trying to organize.

So this isn't new. When they were organizing nurses, they had nurses that they brought on staff to then reach out to employees. They're doing the same thing in the tech space. They are hiring and working with software engineers, former tech employees that know the language. They look like them, they talk like them, they speak their lingo, and that's how they're getting more and more success in organizing.

Scott Jang ([06:16](#)):

Oh well, that is an interesting aspect of the outrage by unions. I never really thought of how unions have to adapt to their audience. Specifically these tech workers who probably look a lot different than their traditional targets in the more traditional economy. And I thought it was very interesting when you mentioned the fact that they are adapting to the messages that resonate with these employees, specifically the social justice elements. What kind of developments or messaging have you seen with respect to unions in that space?

Laura Pierson-Scheinberg ([06:52](#)):

So issue-driven campaigns that code has been focusing on, which is specifically focused on women, workers of color, LGBT, those groups. They're focusing on issues of discrimination, sexual assault, and sexual harassment, age-ism lack of racial and gender diversity, just the core focuses that have always been the case. It's always dignity and respect and compensation.

So if you look at your traditional organizing drivers, dignity and respect is always number one. Compensation is usually two or three. But what drives workers to unionization to start with is when there's a lack of trust and a lack of voice within the organization and they look for help outside. And so what happens is, the unions are creating sort of a virtual hug around these folks, reaching out to them on issues that they care about and already have that connection. And then they work their way in, in that regard.

Scott Jang ([07:51](#)):

And have you seen that being more successful? I would imagine that is quite successful with say, your software engineer in Silicon valley, who for all purposes, is actually pretty well compensated, so might not necessarily have compensation at the forefront of their mind, in terms of issues that they would like to speak to with the company, but more, I would say, social driven messaging. That seems to be really a hot topic, especially in Silicon Valley. I'm wondering if you're seeing that as being really the primary driver in terms of organizing activity, which seems to be at a market departure from your more compensation motivated organizing in the traditional space, traditional economy.

Laura Pierson-Scheinberg ([08:36](#)):

So we're seeing it all across organizing generally, but certainly, you're absolutely right. So I think the hook that the unions are using is the social issue. I think the issues are the same across workplaces. And I think everybody will say that they don't make enough money, even if they make a lot more money than disparity to other groups. And I think it's more about the software engineers having a voice, and that the pay disparity between themselves and the management is really where the rub is.

And so that's the part that the unions grab hold of is, don't you want a voice? Don't you want to say? And COVID has put that into a fever pitch. And the reason why COVID has is because you've seen layoffs in these spaces where you've never seen layoffs before, you've seen an increase in temporary workers that gives this job insecurity feeling to the traditional employee where they're like, "Wait, wait, I'm not safe. I need to go outside for protection. Where am I going to go? Well, if I know in this space that there's these issues that I feel passionate about, and there's some affinity there, there's coalition," that's where they're going to go. That's where they're going to join.

Scott Jang ([09:46](#)):

Well, you raise a good point about COVID. I find that a lot of employees have felt a sense of kind of isolation in this new COVID world, in which everyone is connecting by Zoom and there's kind of a lack of connection. Have you seen that impact the way that unions are organizing? Does that affect in some way, the ability to unions to actually aggregate employees and get them thinking about collective rights?

Laura Pierson-Scheinberg ([10:17](#)):

So unions have been very good at adapting with the times they are digitally savvy, they're aligning more and more with the tech worker. They already have engaged, robust digital partners and in-house capabilities. They're extremely active and aggressive on social media, through the use of Twitter, Facebook, TikTok and others. They have shadow campaigns and algorithms that they're using for targeted messages to folks. So they are

extremely advanced and savvy in this regard. So as workers try to reach out, there are several steps behind the unions who already have these huge, robust in-house staffs that are doing a really great job about it because frankly they didn't have much chance.

I mean, if you look at the traditional tech worker, a lot of that work is remote work. So those workers are, let's say more adapt to the remote workplace that COVID pushed us into. But I think that everyone is different and I think that the social reach outs and sort of the, what happened during COVID and the social issues that plagued our nation, allowed an opportunity for people to reach out and they provided a safe space and a home to talk about those social issues, to reach out, et cetera.

So I think these groups are really good at being the front runners on this and wanting people to feel a part of it, and even more so, from the employer standpoint. This is really where I see the biggest change, right? So from the employer standpoint, our clients are grappling with, if they're leading on these issues, if our employees want it, if the culture is changing, what do we say in response as the employer? Do we say the traditional message of, "We don't want this, we need our maximum flexibility," because historically, Silicon Valley employers have been known to be somewhat anti-union because of that lack of flexibility in particular. And I don't necessarily see that at all with my clients, but that's the reputation so to speak.

But they're left with, "Okay, do I want to have the business reason that I need to be maximumly flexible? Or do I need to agree?" So you're seeing more reach outs for neutrality with the tech space, by the unions to say, "Okay, let's organize without the traditional processes and have a neutrality agreement, where we can come in and organize your workers in a, in a very symbiotic way." And that's a tough choice for employers to decide whether that will fit with their culture or what they want to do.

And so, what I spend a lot of my time doing, is I get these reach outs is trying to figure out where the culture is, what the drivers are, and we help them find their voice in how they want to respond to these really, really tough issues. Because of course, our clients always want to do what's best for their employees and we just have to find the win-win.

Scott Jang (12:59):

Yeah. And I imagine just as the unions are adapting to this kind of new, more digitalized workspace and have adapted their messaging, as you pointed out, employers to need to kind of adapt in terms of how they think of unions and how that fits in their workspace and as well as how do they address employee concerns that might otherwise result into organized activity.

And so, are there any other practical takeaways, in terms of what, if anything, you would recommend employers doing to kind of adjust and tweak to this new environment of a potential organization?

Laura Pierson-Scheinberg (13:41):

Yeah. I mean, I think that, I always say that union avoidance isn't hard, it's about good management. And the factors that keep companies being free are the same factors that make a good management team. So you always need to constantly assess your supervisors and your managers and make sure they're doing the right thing. The don't be a jerk rule, I think is super important. That just because someone's a top performer in a technical way, doesn't mean they should be managing people.

And so there has to be a very close look at, "Is this a good people manager that's in charge of my workforce?" And then assessing the culture; do you have an environment that's genuinely caring, where employees don't feel the need to go to the outside to have an appropriate engagement or a feeling of belonging and safety? Because that's really what the unions are reaching out for, is when there's not a voice, make sure the employees have a voice and feel like they're being heard.

Scott Jang (14:39):

And then at the outset, I kind of admitted my own ignorance and said that, union organizing activity wasn't on really my radar in the tech space. But for those employers who are on the tech space, what are the signs that they should be looking for, in terms of whether or not they should be thinking about addressing concerns that may lead to organizing activity?

Laura Pierson-Scheinberg (15:06):

So I think all of our tech clients need to just do their own wellness check. They need to do an internal look just to make sure. So they need to ask themselves are they vulnerable in a geographic way? So vulnerability in a geographic way, it could be the west coast is very, very geographically vulnerable, meaning it's a very high unionization. So Oregon, California, these are very, very, very pro-union states, where the worker is going to be just bent in that regard. And I'm making generalizations here, but that's always a factor that you look at, where are you geographically? The same thing for New York. That's also another sort of union town, so to speak. So are you a vulnerable geographically? That's the first question.

Then the question is, are you vulnerable in a space where you're being targeted? And I would say tech right now is being targeted, and so we have to be focused on that. You need to see, "Okay, is that an issue for me?" Then as you look at it, you want to say, "Okay, what kind of complaints do I get? What are the issues that I'm hearing? Have there been any recent changes? What kind of press am I seeing?"

And if there is any of these issues that we're talking about, like a fever pitch discussion about feeling that their voices heard collective language, like, the we, the us, the them, we don't feel respected. When you hear the Aretha Franklin, RESPECT, you got to take a double, right? You got to say, "Oh my gosh, this is a sign." And it's not going to be the signs that you got to see

before. When you see multiple people groups that are unusual or congregating together, or requests for policies, those are the traditional kind of things. But in this remote type workspace, and in this ever evolving, we have to be a little bit more tuned in.

We have to adjust our radar to see, are we getting a different kind of complaint? Is it a collective complaint about our working conditions? Are we doing the right thing? Did we put out a policy or something that the policy wasn't exactly received the way that we intended? Do we need to make an adjustment there? And when you don't have a union, you can make those adjustments very, very fast. You can make them very quickly and you need to show responsiveness to those concerns.

And so the worst thing I see clients doing is polling their employees, asking them questions after questions. And that's a great, great vehicle, so long as you take the polling into account and adapt to the answers. If you're going to ask the questions, you have to be willing to address it, to make the changes, according to what you're seeing in the answers. Because I see a lot of clients, "Oh, I pulled them and this is all the things that they're saying." "Okay, well, did you change the policy or to adapt that?" "No, we can't do that." So just be careful about those kinds of reach-outs.

But really, I would say that we all should do a wellness check as a tech employer. And then if you feel like there's some concern, we can always help you with the vulnerability assessment and do a deep dive, if you have red flags, as you do this internal check.

Scott Jang (18:15):

And one of the other things that a lot of my tech clients are always aware of, and that is the press and the idea that the tech space is always under this constant microscope. And whenever something arises in the tech space, there tends to be a lot of press. So any recommendations or advice for how tech companies message their union organizing, the way that they address union organizing with respect to how it's perceived in the public or to the press? Any ideas on that?

Laura Pierson-Scheinberg (18:49):

Yeah, that's a really good question. So we've been engaged by a lot of clients that come to us and ask us, what is our union free strategy or strategy with respect to how we deal with unions. It might not be union free, because again, our clients run the gamut of their position. And so a lot of times we spend a significant amount of time with clients just discussing, "What is your position on unions? How are you going to articulate this to the press, to the workforce?" Because we have a lot of clients who have political ties, regulatory type stuff that they have to be adaptable to, and they cannot be aggressively anti-union. There might be some statutory reasons. There's lots of different reasons around them as to why they have to take a certain position, where they want to be pro-employee, I say.

So don't be anti-union, be pro-employee. And so we do a lot of proactive pro employee relations training for managers, just going over the key factors of consistency is key, the sundown rule, make sure you're talking to an employee when they come to you with a question. Get back to them by the close of the shift to say, "I'm still thinking about you. I'm going to get back to you on that issue," so that they know that you haven't forgotten.

When you actually make changes, go back to the employee and say, "Hey, I looked into this, this is the result." Because a lot of times employees may ask for things or complain about things and managers address it, but then never get sort of the credit for addressing it and getting back to them. So really it's just, like I said, this isn't new, it's just sort of evolving and adapting. So all those basic tenants of good management will get you the longest way to the goal.

Scott Jang ([20:29](#)):

Well, that's great. That definitely has really made me realize that I need to pay a lot more attention to this space. And so I think that's some really great practical advice in terms of both, identifying union organizing activity and the tech space, as well as practical advice of how to address that both with respect to the employee base and also to broader public. Because I do think, again, the tech space does seem to be under a microscope and tends to have greater visibility in the public space. So I think that's all great advice.

Laura Pierson-Scheinberg ([20:58](#)):

Yeah. I think steps you should take now is again, address legitimate employee issues. Make sure your supervisors are trained both, as to how to be a good manager and also sort of on their obligations under the law so that they do the right thing, and that they can actually recognize when there's collective activity and concerted protected activity that's protected under the law, whether you're unionized or not. So as employees come together and complain, we have to remember that we cannot take action against those employees. We would not retaliate against those employees because that would actually be a violation of the National Labor Relations Act.

So, and then as any tech clients would feel, "Hey, I feel like I have a concern here," well, it doesn't take much to do a deep dive into it because we're doing this all the time for all of our clients so we can help let you know whether it's a real concern or just kind of keep it on your radar, but it's not a red flag.

Scott Jang ([21:53](#)):

Well, you can definitely expect more calls from me, Laura.

Laura Pierson-Scheinberg ([21:57](#)):

I always like to hang out with you, Scott, so you got it.

Scott Jang ([22:00](#)):

Well thanks a lot, Laura. This has been very helpful and I think it really has opened my eyes. I mean, as I said, at the beginning of the segment, I didn't think our worlds aligned, and we really haven't had a chance to really sit down and talk to each other. But I think as our conversation today has just shown, these roles really are becoming aligned and increasingly so.

I mean, I've definitely received several inquiries from my clients recently about unionizing in the tech space. And as I prepared for this podcast, I too dug around and saw that there was quite a bit of coverage from even the other side on this space. And they're definitely thinking about these issues and have it on their radar. So it definitely emphasizes the fact that probably I should be having that on my radar as well.

So, as I said earlier, I will definitely be calling you a lot more, Laura. So please keep me on speed dial and pick up my calls, when you see them.

Laura Pierson-Scheinberg ([22:57](#)):

You got it, Scott. We'll be ready for you when you call.

Alitia ([23:02](#)):

Thank you for joining us on, We get work™. Please tune into our next program where we will continue to tell you not only what's legal, but what is effective. We get work™ is available to stream and subscribe on Apple Podcasts, Google Podcasts, Lisbon, Pandora, SoundCloud, Spotify, Stitcher and YouTube. For more information on today's topic, our presenters and other Jackson Lewis resources, visit [JacksonLewis.com](https://www.jacksonlewis.com).

As a reminder, this material is provided for informational purposes only. It is not intended to constitute legal advice, nor does it create a client-lawyer relationship between Jackson Lewis and any recipient.

Transcript provided by Rev.com

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.