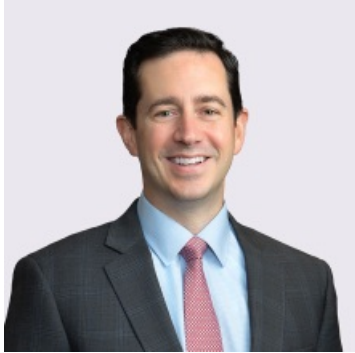


Live from the 2022 Corporate Counsel Conference: Ep. 1

By Christopher M. Valentino, Laura A. Pierson-Scheinberg, Jody Kahn Mason, Eric R. Magnus, Stephanie E. Satterfield, Greg Riolo, Cepideh Roufougar, Susan E. Groff &

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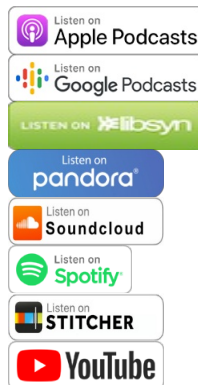


Details

April 19, 2022

Welcome and thank you for joining us for this special edition of We Get Work, live from Miami, Florida and CCC2022. What follows are conversations on the programs focused on three of the firm's core practices since its founding in 1958: labor relations, class action litigations and the trials and appeals practice. Also included is a summary of our spotlight on California, presented by our resource group leaders who address the unique issues facing CA employers.

Jackson Lewis P.C. · Live from the 2022 Corporate Counsel Conference: Ep. 1



Transcript

Alitia (00:07):

Welcome and thank you for joining us for this special edition of We Get Work, live from Miami, Florida, and our 2022 Corporate Council Conference, Jackson Lewis's premier workplace law conference. What follows are short episodes on the presentations that focus on three of Jackson Lewis's core practices since the firm's founding in 1958, labor relations, class action litigation, and the trials and appeals practice. We also include a summary of our spotlight on California and the work of the firm's resource group that addresses the unique concerns facing California employers. For more information on CCC or the topics and issues discussed on this podcast, please reach out to your Jackson Lewis attorney or visit jacksonlewis.com.

Laura Pierson-Scheinberg (00:54):

Thank you. My name is Laura Pierson-Scheinberg and I'm located out of

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the San Francisco and sometimes the Baltimore office of the firm. And I primarily work on labor matters and I'm very active in the labor practice group, as well as head of the retail industry practice. Chris?

Chris Valentino (01:10):

Sure. Yeah, no, it's great to be here, Chris Valentino. I work out of the New York metro, specifically the Long Island office. From a practice standpoint, I feel like I do a little bit of everything, management, training advice and counsel, but certainly my passion is doing traditional labor.

Alitia (01:28):

Thank you very much. Laura, the title of your presentation today was the evolving world of labor relations, and organizing reunion. I guess that's a little bit of a play on words. Can you tell us a little bit about what your presentation was about today and why it was really important to present this at CCC?

Laura Pierson-Scheinberg (01:46):

Yes. Thank you. So right now we have sort of a resurgence of union popularity. The highest we've seen in really in my career and many of us have seen in beyond decades. And the issues we have the most pro-union president. He has said that in several different forums, including the state of the union address. And with the new makeup of the board and a very aggressive general council, we have been talking about sort of the incredible sea change that's about to happen.

Chris, during our presentation used a great analogy of sort of sitting at stopping lights and revving the engine and waiting to get on the highway of each stop light you get up and it's red and then you're revving and revving and revving. And that's really what we're facing right now is that revving of the engine and we're about to take off on the highway and we want to make sure that our clients are ready. So we went over the changes that have happened already and the changes that are to come and really just the overwhelming popularity of unions and organizing has got a new shot in the arm and is super interesting times.

Alitia (02:53):

Thank you. Chris, what are some of the issues you felt resonated with the attendees during your presentation? What did they really want to know from you and Laura?

Chris Valentino (03:01):

So, Laura and I spent a lot of time talking about all of the different developments that are taking place right now from an administrative standpoint, from a labor board standpoint, as Laura said from the general council standpoint. But I thought what attendees really focused on and what they got interested in was the direction of the board, where the board

is taking issues. They're soliciting briefs on the six main takeaways from the Trump administration board. So when we talked about joint employer issues, attendees want to know we know it's coming, what do we do now? How do we prepare for that from an independent contractor standpoint? Getting handbooks ready for sort of the overturning of what they've been living under under the last four years. So it was great. Attendees know the issues. We've been dealing with the issues. What they wanted to hear from why is it different and how do we prepare? So it was good. It was exciting. And look, it was, it was a fun session to do.

Alitia (04:09):

So Laura, given everything Chris just said and the concerns that were raised by the attendees, what in your mind are some of the key takeaways that employers should keep in mind as they're moving through this new resurgence of organizing?

Laura Pierson-Scheinberg (04:23):

So I think if you're a unionized employer that you should be looking back to what happened in the Obama administration with the rules under the national labor relations board as the floor of which how you should operate now. So kind of ignore how the law shifted during the Trump administration and kind of look at what you did back then. For non-union employers, this is the really interesting part of our work right now. It's really about being proactive. And when I say proactive, you need to look at your bargaining, your workforce, employee interchange, et cetera, to look and see what we call a bargaining unit analysis.

But more so, and most importantly, and I think most passionately behind my own heart is that unions right now are organizing on two main issues, social justice issues and safety. And they are awesome. And so we need, and we are coupling with our DEI team members to look at getting in front of and doing vulnerability assessment audits and DEI audits together, looking at it with both of our respective lenses. And from my perspective and what I get so excited about is it's going to make the workplace better. Even if there's no union activity, ultimately the workplace will be better after they've gone through it.

Alitia (05:39):

That's fantastic. Chris, how else is Jackson Lewis providing assistance to organizations on these issues?

Chris Valentino (05:45):

So I think it's really, it's really two answers. What Jackson Lewis does like many of the law firms, we educate. And if you go on our website and you sort of log in and listen to our podcast, there's a lot of education. But what I think Jackson Lewis does better than any firm, and I really do believe, I think the labor practice group at Jackson Lewis does it in a phenomenal way, it's not only here the issues, but here are the practical creative

solutions.

So when you're listening to our podcast, when you are reading our articles, they always close with what should you be doing now to prepare? So take a look every month. Our practice group produces the top five things that you need to know that's happening on the legal landscape. And in every one of those we talk about getting prepared. What do you need to be doing now? So this is not a once or twice a year. This is every month we are out. We're talking with employers. Here is what, the issues that you need to be aware of, and here is how you can be very proactive in addressing those issues before they become problems in your workplace.

Laura Pierson-Scheinberg (07:00):

And from my perspective, we really are focusing on what we're calling caffeinated organizing. So there's been a huge resurgence of unions, as I had mentioned, and it's primarily focused on coffee chains. And right now there's one major coffee chain that has had 170 plus simultaneous petitions. And so we are working on creative ways to combat that for what we believe is a pattern of corporate campaign tactic that will come for union. The unions will come for all of our clients with that same kind of pattern structure. So we're excited about that.

Alitia (07:35):

And you're getting ready.

Laura Pierson-Scheinberg (07:36):

And we're getting ready and we'll make sure that our clients are ready.

Alitia (07:39):

Well, Laura, Chris, thank you so much for sitting down with us this afternoon and we hope you enjoy the rest of the conference.

Chris Valentino (07:39):

Thanks so much.

Alitia (07:45):

Thank you for your time.

Jody Mason, Eric Magnus. Thank you for joining us today. Jodi, can you tell us a little bit about where you're from and your practice at Jackson Lewis?

Jody Mason (07:56):

Sure. So I'm a principal in the Chicago office of Jackson Lewis. And for the past several years, we've been doing a lot of privacy litigation and in particular, a lot of biometric privacy litigation. Obviously that's been a huge hotbed in Illinois under the Illinois Biometric Information Privacy Act.

We've seen just huge spikes in those class actions over the past several years, and they don't seem to be showing any sign of stopping. So that's certainly kept us busy over the past, since 2017.

Alitia (08:24):

Eric?

Eric Magnus (08:25):

And my name is Eric Magnus. I'm a principal in the firm's Atlanta office and I'm the co-chair of the firm's class action practice group. I spend most of my time either litigating wage and hour class and collective actions across the country, or trying to help our clients stay out trouble to keep them out of those class actions. And rather be doing the latter than the former.

Alitia (08:45):

Okay. And Eric, the title of your presentation today was not surprisingly, employment class actions, preparing for new and emerging trends and best practices for risk management. Can you provide a brief summary about what you spoke about in your presentation today and why you both felt it was important to bring this topic to CCC this year?

Eric Magnus (09:04):

Yeah, sure. So the cases that we defend, class actions are the types of cases that can, they're not just nuisances. They, these are the types of cases that can be company kind of litigation. They can have material effect on what the C-suite cares about. So what we try to do today, given that it's been so long that we've had this in-person opportunity with our clients is to sort of get them caught up on the trends of where we've been seeing class action litigation going. And it's been evolving pretty rapidly.

And the type some class actions and the percentages, especially of what the cases we've been defending over the last year, a couple years have changed. It's gone from what was a vast majority wage and hour practice to now cases like Jody's handling on biometric privacy cases. USSERA military benefit cases, certainly COVID-related class action litigation that involve all kinds of discrimination statutes, also wage and hour cases, a move from classical sort of wage and hour cases to gig economy cases involving independent contractors and people who are not otherwise your normal sort of employees. So that is the main purpose of what our presentation was was to get our clients kind of caught up on trends of where we're seeing class action litigation.

Alitia (10:18):

Sounds like there was an awful lot to catch up on. Jody, what do you believe are some of the issues that really resonated with the attendees during the presentation?

Jody Mason (10:26):

Sure. So I think part of what we tried to do today is just to bring awareness to employers and companies that about what we're seeing, not just nationwide, but in certain states that might be trends that are going to start to evolve in other areas as well. So, obviously I talked about biometric privacy litigation right now. We're seeing a lot of that in Illinois, but there are certainly a number of states that have tried to propose copycat legislation elsewhere. And I think that we're going to start to see that as the technology continues to evolve. And frankly, the legislature is not always... It is slow to respond. So I think we're going to start to see these things more and more in other states, other jurisdictions. And so I think what really resonated with the clients is to try to get out in front of that and make sure that you've got a compliance scheme in place before they hit states other than just Illinois.

Alitia (11:20):

Thank you. Eric, were there other concerns that were addressed or questions that were asked during the course of the presentation?

Eric Magnus (11:27):

Yeah, so we spent a lot of time, not just on the litigation, but also on prospective measures to try and avoid that litigation. Classically that has been arbitration agreements with class action waivers. And there's been a lot of going on in that area, too, Congress has been and the courts have been very unable to sort of push back on mass employer use of arbitration agreements, which has led the plaintiff's bar to come up with more creative tactics to try and push back on this, especially mass arbitration.

So we spent a lot of time on talking about how plaintiffs go about ginning up mass arbitrations, the pressures that those put, the economic pressures those put on companies, ways that you can amend your arbitration agreements so that you don't get succumbed to the plaintiff's side pressure of filing mass numbers of arbitrations and make it economically and feasible to be able to litigate those. And we talked about the changes in the AAA protocols and other arbitration agency protocols to allow employers to push back on that. So we spent a lot of time talking about not only the class action trends and litigation, but also on how the law is evolving and the trends on the plaintiff's side are evolving to avoid those class actions in the first place.

Alitia (12:42):

Gotcha. Thank you. Jody, what do you believe to be the key takeaways that employers should keep in mind when addressing all of these issues, both the litigation issues and the prevention issues going forward?

Jody Mason (12:55):

I think a lot of it is to avoid silos within your organization because a lot of

the issues that we talked about today from PAGA claims to biometric privacy claims to wage and hour issues, they transcend one particular department, one particular group of employees within an organization. And to make sure that the right hand knows what the left hand's doing. So to speak, to make sure that everybody's working in tandem to get in front of these issues and to avoid any blind spots and to make sure that we're aware of where the potential risks may be and then to prevent the litigation from happening in the first instance. So that would be, I think, a key takeaway for our clients here today.

Alitia (13:37):

Eric, how else is Jackson Lewis helped? Are you and Jody and all of the lawyers at Jackson Lewis providing assistance to employers on these issues today?

Eric Magnus (13:47):

Yeah, so like we've been saying, the best time to deal with a class action for our clients is before it's filed as opposed to after. So we spend a lot of time tracking legal developments, putting out publications on cases, legislative developments in our practice group. We spend a lot, most of the people in our practice group work on those kinds of articles, prophylactic advice to clients to keep them out of trouble. So we like to try and give our clients the ability to stay ahead of these things as opposed to behind them. And our website and our blog try and do a good job of that every day that we try and stay on top of these developments.

Alitia (14:26):

And if not, they can call you.

Eric Magnus (14:28):

Always, they can call. Yeah.

Alitia (14:30):

Jody and Eric, thank you so much for joining us today and we hope you enjoy the rest of the conference.

Jody Mason (14:34):

Thank you.

Eric Magnus (14:35):

Thank you, Alitia.

Greg Riolo (14:37):

Yeah. Hello, my name's Greg Riolo and I'm with the Albany office, formerly White Plains for, just celebrating my 25 years at Jackson Lewis. And Donny English and I are really excited to really start the trials and

appeals practice group is an outgrowth from the litigation group, which Stephanie leads.

Stephanie Lewis (14:55):

Hi, I'm Stephanie Lewis and I'm one of the co-leaders of the firm's litigation practice group, along with Stephanie Adler-Panderas. And I manage the Greenville South Carolina office. And I love trying cases.

Donny English (15:07):

Hi, this is Donny English, and I also love trying cases. I'm the litigation manager in Baltimore. And as Greg said, I also co-lead the trial and appeals group.

Alitia (15:16):

Well welcome. And thank you all for joining us. Stephanie, I'll start with you. The title of your presentation today was spotlight on trials, what in-house counsel need to know regarding how to take a case to trial and what to do once you get there. Can you provide a brief of summary about what that presentation was about and why it was important for our CCC attendees to get that information today?

Stephanie Lewis (15:39):

Sure. Happy to. So the spotlight on trials presentation really was focused on a few key things that we wanted the audience to know. First that there are a lot, lot more employment trials than people may expect and that our win rate at trial is very high, around 70%. And so we wanted to give the audience some of our tips about how to prepare their cases for trial and then how to win at trial once they get there.

Alitia (16:09):

Thank you. Donny. What were some of the issues you think that resonated with attendees during your presentation? What do they really want to know?

Donny English (16:17):

Yeah, well, I think one of the things that they want to know about is just kind of the depth of our group and what makes the Jackson Lewis trial and appeals group unique. We have almost 60 lawyers who have first chair experience with employment jury trials. And we don't have the typical model where we just have three or four lawyers that can swoop in and try a case. We have the depth of experience where our lawyers can get involved in some of the most contentious cases that our clients have. And they really appreciate having that resource available to them. One of the attendees mentioned that they really like kind of the war stories that we told to kind of piggyback on some of the points that we were making.

The other point that really resonated with them is how trial lawyers

play offense rather than defense when it comes to handling cases from the onset. It's not just kind of being that aggressive trial lawyer at trial, but it's really framing a case from the demand letter stage or the charge stage, framing it for success in order to, whether it's getting leverage to get a favorable settlement or positioning a case to have success on a dispositive motion or ultimately winning at trial if trial becomes necessary.

Alitia (17:36):

Thank you. Greg, were there other concerns that were addressed or raised during your presentation that you'd like to talk to the audience about?

Greg Riolo (17:43):

Yeah, sure. I think one of the concerns that a couple of the attendees raised was the fact that they're just tired, from the company standpoint, from the in-house standpoint, of settling cases. And so there was a concern obviously with the risk of trial, trying to avoid that risk. And some practical things that I think we spoke about in terms of how you develop your story, like Donny said, in terms of developing it and getting your story across to the jury. And I think we gave them hopefully some things to think about when they go back through trial strategies.

But in terms of trying, not that we're saying try a case. Donny said it to one of the attendees, "If I wanted to sell you a case, would you buy it?" The answer's of course not. You're not going to buy a trial, but sometimes you have to do that. And I think one of the things that was resonating in the concerns was there's tiredness about having to settle cases because there are concerns bringing it forward to trial. And even one thing from the insurance case, one of the individuals was concerned the insurance wasn't going to be available because cases are getting settled and settled and settled. And so premiums are just going up, sometimes to an exorbitant amount. So I think so those are some of the other concerns that were raised by the attendees.

Alitia (18:50):

Stephanie, earlier this morning, one of our keynote speakers was commissioner Janet Dhillon of the EEOC. As the head of the litigation group, what did you take away from commissioner Dhillon's remarks that you think can help, not only our attendees here at CCC, but the audience listening to this podcast?

Stephanie Lewis (19:08):

Stephanie Adler-Panderas and I were really struck by commissioner Dhillon's comments about the need for companies to spend more time and resources on their position statement drafting and the importance of the position statement when viewed through the lens of the EEOC investigators. And also the need to formally supplement the position statement if any additional facts are discovered. We were also struck by the details around the agency's plans to increase their staffing levels so that

they can dig deeper in cases and bring more systemic or impact litigation. So I think that there were a lot of really important lessons from commissioner Dhillon's comments that tell us that there's a lot more litigation from the EEOC coming.

Greg Riolo (19:58):

And I think also just to follow up on what Stephanie is saying, I think the commissioner was pretty clear in terms of when asked a question about the content of the position statement, should I concentrate on the facts? Should I concentrate on the law by one of our attendees? And she said, "There's really two audiences when keeping that in mind." And with respect to the facts, you really focused on the investigator, but if there are the legal arguments, that's really something that resonates later on, whether it's by legal in terms of considering to take it to the next level, or even ultimately if there's differences between a circuit that might be considered by the ultimate decision maker and not the investigator. So I thought a couple of the points were really good, and I think it gives us an opportunity to really go back to our litigators and explain some of those things as we're thinking about it.

Alitia (20:40):

Donny, going back to the trial presentation for just a minute, what do you believe to be the key takeaways employers really should keep in mind when potentially presented with a trial or what they could do in advance of that taking place?

Donny English (20:54):

Sure. One of the topics that we covered is doing a proper and thorough investigation. And just from the start of a dispute, developing the themes early on, preserving evidence early on, identifying key factual issues and doing what it takes to eliminate those key factual issues in the beginning and as the case is starting to progress towards trial. Also identifying evidentiary issues that may arise and positioning that evidence to be able to make sure that you can get it in during trial and kind of setting it up through discovery so that you have what you need in order to get it in during trial. But those are some of the things that were key takeaways for them, audience.

Alitia (21:39):

Okay. Thank you. So this is for Donny and Greg as leaders of the new trial and appeals group Jackson Lewis, how Jackson Lewis and how are you both helping provide assistance to all of our clients around these issues?

Greg Riolo (21:53):

Sure. And I think one of the things as Donny had discussed, we have 56 people identified on our website as with multiple jury trial experience at Jackson Lewis employment cases. And I think our group is much bigger

than that. We want to explain to people that we have another hundred people who have been involved at trials, whether it's a second chair, whether it's one bench trial, maybe one jury trial. And so our goal is to really train those individuals so we can ultimately say, and we were asked in a previous interview that we want to be able to say we have well over a hundred trial attorneys in the next couple of years. And I think we're well on our way. And we're going to position it in working with the litigation group to really train who we believe are going to be the next stage of our trial attorneys.

Donny English (22:36):

Yeah. And the other thing that Greg and I do for clients is there's probably not a day that goes by where we're not talking to members of the Jackson Lewis team who have trials coming up and we dive deep into their cases and we make sure that they're on the right track in identifying whatever issues and answering whatever questions that they may have to help them position a case for trial and be successful once they get there.

Alitia (23:04):

Donny, Stephanie and Greg, thank you so much for joining us this afternoon and we hope you enjoy the rest of the conference.

Donny English (23:10):

Thank you. Looking forward to it.

Stephanie Lewis (23:11):

Thank you.

Susan Groff (23:14):

Hello, I'm Susan Groff and I am a principal in the Los Angeles office. And I co-lead the national advice and council practice group. And then I co-lead the California advice and council resource group.

Cepideh Roufougar (23:30):

Hi, my name is Cepideh Roufougar. I'm a principal in the San Francisco office and I co-lead our California vice and council group with Susan.

Alitia (23:39):

Thank you. Ladies, the title of your presentation was spotlight on California. Can you tell us a brief summary of what was covered during your presentation today and why it was important to bring those issues to CCC?

Cepideh Roufougar (23:53):

Sure. We covered a top 10 list of issues that oftentimes give employers heartburn when they are in California or dealing with California

employees. So it was just a little bit of everything you need to know, want to know, may not want to know about doing business in the state of California.

Alitia (24:11):

Susan, out of all of those 10, what are some of the issues you think that really resonated with the attendees during the presentation?

Susan Groff (24:19):

Well, wage and hour. It may not be a sexy topic, but it's a scary topic. And so I think some of those wage and hour topics were of greatest interest. Cepideh discussed California vacation rules and I touched upon some meal and rest issues. And it raised a lot of questions for the audience.

Alitia (24:44):

Were there other concerns that were addressed by the attendees during your presentation?

Cepideh Roufougar (24:51):

I think folks were interested in knowing some of the differences with California's leave laws because that's such a complex area and making sure that they are in fact administering leaves in the way that they should be administered in California. And that they've got all of the leaves that apply, their leave management folks know what all of those are.

Alitia (25:11):

So given all of the complexities in California, what do you believe are the key takeaways, things that you really want employers to know coming out of your presentation and for our listeners?

Susan Groff (25:23):

I think one global takeaway is to not assume that the way you do things outside of California will necessarily work in California.

Cepideh Roufougar (25:35):

But that doesn't mean that it's scary to be in California. There is a way to make it work and we're here to help you do that.

Alitia (25:42):

So why don't you tell us a little bit about how Jackson Lewis and how you both help employers through some of the issues that are raised in California?

Susan Groff (25:50):

Well, we have a fabulous California blog. We are the only state that has our own blog at Jackson Lewis. And we have a number of webinars throughout

the year that clients really find useful.

Cepideh Roufougar (26:08):

And we've got a team of attorneys in California who are dedicated to being there, to help with advising employers as they navigate some of the trickier, stickier issues that arise in our state.

Alitia (26:20):

Well, thank you very much for being here today and we hope you enjoy the rest of the conference.

Susan Groff (26:24):

Thank you so much.

Cepideh Roufougar (26:25):

Thank you.

Alitia (26:28):

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