Podcast

# Live from the 2022 Corporate Counsel Conference: Ep. 3

By Suzanne G. Odom

April 19, 2022

## Meet the Authors


Suzanne G. Odom
Principal
864-672-8091
Suzanne.Odom@jacksonlewis.com


## Details

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Welcome and thank you for joining us for this special edition of We Get Work, live from Miami, Florida and CCC2022, Jackson Lewis' premier workplace law conference. Next up: a summary of our sessions employee benefits and the far flung workforce--how COVID-19 and current legislation are changing the value proposition for employee benefits, preparing for fast moving mandates and capitalizing on opportunities benefits provide for hiring and retention.

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## 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 Counsel Conference, Jackson Lewis's premier workplace law conference. What follows is a summary of our speed round focused on employee benefits, and our session that focused on the far flung workforce. And how COVID-19 and current legislation are changing the value proposition for employee benefits, and what employers can do to prepare for fast moving mandates and to capitalize on the opportunities benefits provide for hiring and retention. 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. Okay. Hey Sue, how are you?

Sue Odom (00:56):

Hey Alitia, good to be with you.

Alitia (00:57):

Thank you so much for sitting down on this episode of We Get Work, live from CCC. I'm going to first ask you to just tell me a little bit about your practice, where you're from, and what you do here at Jackson Lewis.

Sue Odom (01:09):

Thanks for having me join you today Alitia, super nice to be participating in this podcast. I'm Sue Odom. I am from our Greenville, South Carolina office, the Jackson Lewis, and my practice area includes employee benefits and tax. So this day and age I'm dealing with a lot of remote and hybrid work issues implicated by people working outside of the office space, the wage withholding aspects, the unemployment tax aspects, while also working with 401k plans, health and welfare plans, executive comps, so the whole gamut.

Alitia (01:43):

Well you're a busy woman. In fact, you did two presentations for us today at CCC. You did one of our speed rounds on employee benefits, and you also participated in a panel and the title of it was Where Did Everybody Go, A Day in the Life of a Legal Department, Addressing Increasingly Far Flung Workforce. That's an awful out of words and it's a long title. So can you share with our listeners a brief summary of your topic and why it was important for you to address these issues and also issues that you talked about on employee benefits during your speed round at CCC 2022.

Sue Odom (02:17):

Sure. So from the standpoint of the employee benefits presentation, I wanted to give a little pep talk and by pep I mean a little policy, a little enforcement, a little planning, because you know, employers really have become at the center of employee benefits. When you think about where things were almost 50 years ago when ERISA was passed, where the law said basically you don't have to an employee benefit plan, but if you do then you have to follow these rules. Now it's become more legislative and mandates, think of the Affordable Care Act in 2012, where now employers are facing penalties if they fail to offer benefits. And I think there's going to be more and more of that over time as we look for the future and pension plans are being terminated, social security may not have the funding there in 2037, which is a little concerning. And people, when the census bureau does a review and concludes that 47%, in 2017, people didn't have retirement savings.

So we think that there's going to be more policy related directives to provide these. And who better to do that than employers? You know, as we think back through the pandemic and all the edicts that came out from the federal government about employers need to watch out for, make sure that these vaccines are there and employers need to provide this diagnostic testing. Why are they choosing employers through that process? Well, it's because they're good at it, right? They're really good providers, facilitators of these policy directives. Whereas if you think about the other government programs that there might be, whether it's social security or the postal service, and there's concerns there about being able to provide and meet the needs that are out there. So I think that there's going to be more and more of this employer driven benefits that come out of this.

And we're seeing a shift already. We're seeing movement in the states in the paid sick and disability leave space. And there have been proposals for a federal solution for that. We're not there yet, but I am sure that that's going to continue to be at the forefront of legislative initiatives. We're seeing, last night, the House pass a bipartisan, which word doesn't always come out of our mouth these days, but bipartisan legislation for additional retirement plan reforms where automatic enrollment and auto increasing retirement savings is the forefront of that. Making sure that people can get their money in there. Part-time employees benefiting sooner rather than under what some of the prior legislation was in 2019.

Delaying distributions so that people, realizing the longevity, we're all living longer, we're working longer, that distributions, we have to be able to live off that, because we don't want people living in poverty in retirement. So we focused alot on the policy. We also talked about enforcement and how from the standpoint of benefits, I mean, it used to be we'd have a statute and then we'd have regulations two years later, and then they would start enforcing it another two years after that. We had a lot of lead up time. And now it's like they publish an FAQ and five days later they're enforcing it. And not necessarily even the law, it's just a position statement or a best practice guideline, and then they're enforcing it. So we all have had to kind of really dig in and invest in keeping up with the changes and being prepared for immediate enforcement of the policy edicts that we're getting out of government.

And of course, internet has facilitated all that. You know, we all have access to the internet, so things happen. The pace of change is so fast now, so brisk. But we concluded the benefits presentation with a discussion about planning. And how now is the time that we really should be thinking about our workforce, who we're trying to attract, who we're trying to retain and what their needs are. I shared an analogy of a VCR. Do we still have VCRs in our home? No, we have streaming devices and my kids, who I'm not even sure what the generation is, it's whatever comes after Gen Z, but they wouldn't even know how to operate a rotary phone or a VCR. So we don't want our benefit packages being what was standard in the seventies or the eighties, or even the nineties.

I mean, the workforce today has mobilized and has become so tech savvy and their needs are differen, and recruiting needs are different. You know, people are demanding remote work and hybrid work, which of course lend itself to my other session I gave. They are asking for childcare assistance and they're asking for elder care assistances, or time to be able to take care of these people. Education assistance has really become one of the things I'm advising on regularly, the tax implications of employer provided education and loans. Can we loan these employees money to be able to recruit them? And so it's really lot of planning opportunities. I always recommend to my employer clients, don't stay stagnant. You know the edict, if it's not broken, don't fix it doesn't fit here. We need to be paying attention, looking ahead, looking around and getting ready for what's next to be able to stay leaders in the industry.

And so I also shared the important reminder that when things are good, when things are slow and we're not in a crazy tizz of laying people off and terminating people because we have a pandemic, this is the time to be looking at severance plans and severance policies and getting those right. Because the number of employers that I spoke with through the pandemic, when they said, yeah, we really need to look at the severance plan, but we can't do that now, because we're about to lay off 500 people. Fast forward two years, now we've got a little bit of a break from that craziness that we were in. And so now is the time to be focusing in on things like that. So kind of a whirlwind there.

Alitia (08:58):

It sounds like a lot to think about. A lot going on. As if that Wasn't enough, let's switch gears for just a second to talk about the far flung workforce. What sort of issues resonated with the attendees that were at the conference? What things were they concerned about?

Sue Odom (09:14):

You know, it was my practice in the remote and hybrid workspace focuses on wage withholding and unemployment tax. And so it is a very concerning area for employers because just even knowing what all the laws are that govern that, and it is a very complicated analysis requiring for wage withholding purposes, a state by state look. And unemployment is different, it requires an employee by employee fact specific study of what their work arrangement is. And the lawyers in the room, not necessarily knowing what payroll is doing or concerned that payroll doesn't ask the right questions to be able to process in, so we talked a lot about that concern. It was one of the primary concerns raised when we began the presentation, asking the audience what are the types of things that they're dealing with? And so we talked a lot about that. If you were to ask me what the takeaway from the presentation, I asked the audience who attended, do they feel better after this presentation, or do they have any thoughts about how this is going to affect things?

And people shared that it felt good to know that they weren't alone. They were not the only ones dealing with the issues and we're all kind of grappling with it together. You know, from an enforcement standpoint in the tax space, the taxing authorities tend to lag because we file our tax returns and a year or two later, they start to look at them and hear from them. And so we're fully anticipating that the plaintiff's bar is going to be on this well before, well in advance of the taxing authorities. And we have some very educated employees. I gave an example that I had with a client about an employee who worked in California for a number of years and then on their own decided that they were going to go work from Michigan. And then went and had a baby, but claimed California benefits for that leave.

And so that employee knew California had better benefits than Michigan. And this is the kind of stuff that they're demanding. It's going to be the same with the plaintiff's bar. You know, the plaintiff's bar is going to say, hey where was your office, but where were you really working, and which laws better? And do we file a claim for Florida, this and that, and North Carolina, this and that and California, this and that? So it's going to be really interesting, complicating the litigation of these matters. But we also came to the realization during the presentation that this is not a temporary thing anymore. I mean, the fact that everybody in the room had people working on a hybrid base, and the room was full of people, right?

We are, all employers, all workforces are starting to have flavors of this and we're trying to grapple with some of the issues. So I was not the only presenter in the room and my colleagues shared some tremendous insight. And all the various compliance issues that are implicated, whether FMLA, or wage and hour, and all the various pay questions and PTO questions that are difficult to grapple with. And whether you need to have a separate policy, an addendum, and all this stuff. So it is a very complex area. And I think we're going to be in it for the long haul on that one.

Alitia (12:55):

So this is almost going to be an impossible question for you to answer given everything you've just shared with us on the benefit side and the tax side. But what do you think maybe should be some of the key takeaways that our attendees and our listeners should remember when they put their iPhone down, or when they leave the room at the conference, on either or both sides?

Sue Odom (13:20):

That is a difficult question. Okay. So I would say key takeaways from the benefits side is to say, look, and I'm regularly saying this to my counsel clients and others. Benefits shouldn't just be a backroom thing. Benefits is the, frankly COVID brought it to the forefront. COVID changed value proposition for benefits. Everybody suddenly realized how valuable group health insurance coverage was. Everybody suddenly realized how important it was to have a nest egg. Whether it be a retirement plan from which you could get a hardship distribution, or a CRD, coronavirus related distribution. When we don't have resources to be able to protect our families as we're getting close to retirement, it's a very stressful thing. If we don't have health insurance coverage when we are fearful of a medical condition, it's a very stressful thing.

So it's become almost like a gimme, right? It's become almost the kind of thing that employees expect and frankly demand. And if an employer doesn't have a retirement plan or an employer doesn't offer good medical insurance coverage, or doesn't subsidize it well, they're going to look somewhere else, all right. But it's not just that. Now the takeaway has expanded so that you're looking beyond the core offerings. And who's best to look beyond the core offerings at what an employer should be offering to the employees? Is it the person in the back room who doesn't understand the strategic initiatives of the organization, what the talent is that they're trying to attract and retain? No, I mean, it's moved to the C-suite. It's moved to the people who are the decision makers of the organization, who have become very much focused on making sure that what they're offering makes them competitive and the best choice for the talent that's out there in this limited market that we've got for talent.

So focusing in, really digging in, studying your program of benefits, figuring out if it's the right fit for the company to attract and retain the talent you want, and thinking outside the box. I shared with the group today that when you asked me what the trends are in benefits for this day and age, not a single one of the things I mentioned was an ERISA governed plan. I mean, benefits, the whole concept of benefits has really morphed and has moved, a lot of it has expanded. PTO is one of the, like millennial generation, if you don't offer ample PTO, they're going to look somewhere else. And that is not a core ERISA plan, right? And so thinking outside the box and really figuring out whether it's tailored to meet your needs. So that's a key takeaway there.

For the remote and hybrid work area, internal controls. That is my number one. That is the number one thing that I always recommend to my employer clients. What do I mean by internal controls? Well, that's an accounting term of ours. I'm a tax lawyer, sorry. But internal controls are the mechanism that companies use to manage their compliance requirements. If you don't know where an employee is because you don't have expectations on that employee or a policy or whatever the right fit is for your organization, that they ask permission before leaving the state and starting to work from another state, how in the world are you ever going to manage legal compliance for that person? And it's got to start with internal controls. And it's got to start with collaboration among and across departments in the organization. If you just put this on HR, you'll be missing all the finance aspects of it, which involve payroll a lot of times.

If you just put this on HR, you might be forgetting to include IT in the room when there's all these laws coming out with privacy and data in at least four different states now. So it requires cross collaboration of departments setting policy and then enforcing those internal controls on your workforce and also setting their expectations about what they're supposed to be doing on a day to day basis. Where they're supposed to be working, what wages they're going to be withheld for what states, what unemployment tax and other statutory benefits to which they're entitled. And communicating proactively to set their expectations so that when they get that penalty notice from the local taxing authority, and they come waving at you saying, this is your fault, you didn't withhold properly. That you can say, look, I told you to talk to a tax advisor.

Alitia (18:06):

Well, that leads right into my last question in which is, Sue, how are you and other lawyers at Jackson Lewis helping our clients and employers and organizations grapple with all these issues and the complexity and the speed at which they need to respond?

Sue Odom (18:21):

So we regularly are involved in conversations. First and foremost, I have to hear what my clients are sharing, listen to their challenges and listen to their needs before we figure anything out. But we'll hop on brainstorming calls regularly and talk through these issues. And usually out of the brainstorming call will be a call to action for something like, can you help us draft a policy that would deal with these issues? Can you help us construct an employee communication that we can send so that employees are aware of these wage withholding requirements? Can you help us sit down and figure out what benefits, like do a strategic planning discussion about benefits and what might be a good fit for our organization that we haven't yet tried?

You know, it's all a matter of sharing, right? And when I spend eight, 10 hours on the phone all day, every day with clients talking about this stuff, we really do get exposed to a lot of industry trends, a lot of new ideas, things that are working, things that are not working. We also get involved in a lot of enforcement matters, which of course educate us on where we should be focusing our compliance dollars. And so having these conversations, helping to construct programs that work for your organization, helping you grapple with all the needed internal controls and getting the right players to the table to discuss them, is what we do on a day to day basis. And frankly, something that I love doing, talking to people anyway.

Alitia (20:04):

That's fantastic. And Sue, thank you so much for joining us today and for sharing the benefit of what our attendees heard here at CCC. And we will welcome you back to the We Get Work podcast mic anytime.

Sue Odom (20:17):

Thank you.

Alitia (20:20):

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