

ESG: Utilizing the Framework to Address Employee Concerns and Safety Needs

By Laura A. Pierson-Scheinberg & Karl F. Kumli

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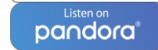
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Details

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Jackson Lewis P.C. · ESG: Utilizing the Framework to Address Employee Concerns and Safety Needs



Transcript

Alitia Faccone:

Welcome to Jackson Lewis' podcast, We get work™. Focused solely on workplace issues, it is our job to help employers develop proactive strategies, strong policies, and business oriented solutions to cultivate an engaged, stable and inclusive workforce. Our podcast identifies issues that influence and impact the workplace, and its continuing evolution, and helps answer the question on every employer's mind, how will my business be impacted? Employers are leveraging ESG to address various employees and shareholders concerns, including appropriate workplace safety controls that respond to employee input while maintaining compliance with state and federal standards.

On this episode, of We get work™, we discuss how workers and workplace safety departments can use the ESG framework to succeed in making workplaces safer. Our host today are Laura Pierson-Scheinberg, a principal in Jackson Lewis's San Francisco and Baltimore offices, and Karl Kumli, an associate in the Denver office. Laura is a member of the firm's labor group, and leader of the Retail Industry Group.

She also spearheads the Jackson Lewis Caffeinated Organizing Initiative,

which advises on the recent uptick of union activity in the retail and restaurant industries. Laura is frequently called on to speak on this topic by numerous professional associations, including most recently, the Retail Industry Leadership Association's Retail Law Conference, the National Retail Federation, and the National Restaurant Association's 6th Annual Law Summit. Karl assists clients in navigating questions related to safety and health concerns in the workplace. Karl's background includes experience, both as in-house counsel and outside advisor. This perspective allows Karl to better understand clients' needs and constraints in overcoming questions about workplace safety. Laura and Karl, the question on everyone's mind today is, how can workplaces use OSHA guidance to improve workplace safety and address employee concerns? And how does this impact my organization?

Karl Kumli:

Hi, Laura. Thanks for talking with me today. I think that one of the big questions that has come up in the workplace safety area is addressing employee concerns regarding environmental hazards and also what companies are doing to be good environmental stewards. Is that something that you've experienced on your side?

Laura Pierson-Scheinberg:

Yeah, so Karl, our practice groups have worked long together. You always have safety and labor go hand-in-hand. Unions were built on safety issues. That's really before OSHA, before Title VII, before all those laws came in place, unions were there making workplaces safer. And so that certainly is an issue where environmentally, when you're looking at things, you have to make sure that the workplace is safe. So that always is a hot button for employee concerns. I mean, as we started this ESG group, we all have a seat at the table, but as we've talked about, this isn't new, right? I mean, the ESG work isn't new, it's just a kind of a new packaging.

Karl Kumli:

I think that's exactly right. And I think that it's really helpful to think of the layers of environment that employees interact with, whether that's having appropriate safety controls in place at the workplace to make sure that employees don't have access to dangerous chemicals that they're not trained on. Or to make sure that the company is really being clear on what they're doing at a corporate level to encourage environmental stewardship, and reduce the company's impact both locally and globally.

Laura Pierson-Scheinberg:

And safety, ever since COVID, right? Has become at the forefront of everybody's minds. Whether it be unions, whether it be companies, and whether it be the agencies that oversee those companies. So safety, we all have a new refreshed look at it, from my perspective. And with COVID, it's kind of coming out of it on the other side, it's made us more cognizant of

safety issues, I think, of all kinds.

Karl Kumli:

You're spot on. OSHA had a focus on COVID. And now as we're winding down that public health emergency, we're really looking at an OSHA focus on other environmental safety concerns like heat exposure for employees who are working in spaces that are warmer than 80 degrees, and how companies are addressing the employee needs to make sure that those workplaces and those employees remain safe during the entirety of a shift.

Laura Pierson-Scheinberg:

And that's super important right now as we go into the summer months, that heat safety, and the push that was put on last year, do you see that continuing on in this next season?

Karl Kumli:

Continuing on and increasing. OSHA's working to put together a comprehensive heat safety requirement, and is already using their general duty clause to require employers who have high temperature work areas to develop heat safety plan that addresses all of those issues. That's also a way that employers can really be proactive, and show employees that they are at the front of this issue. Rather than waiting for OSHA to promulgate new regulation, employers can use some of the guidance from states that already have this sort of requirement in place, to develop a plan that will meet the OSHA requirements when they come out, but also to show employees that they're being PAC leaders in addressing these sorts of concerns.

Laura Pierson-Scheinberg:

Yeah. So I think we've talked a lot about the E, right? The E in ESG is environmental. What kind of focus are you seeing on the S, the social, from your perspective as an OSHA professional?

Karl Kumli:

The biggest focus that we're seeing right now really focuses on employee safety from incidents of workplace violence, and that really runs a broad spectrum. Everything from combative and dangerous, patrons at stores and restaurants, to interactions with patients in medical settings. OSHA has really taken a focus on ensuring that when folks are at work, whether they're required to interact with the public or whether they're required to interact with people who they are providing care and services to, that those interactions remain safe.

Laura Pierson-Scheinberg:

And I'm seeing exactly the same thing sort of with my various hats on. So if I look at my Retail Industry Group leader hat, we're hearing a lot of things out in the field from our retail clients, retail and restaurant clients, because there's a bit of an overlap there. Just on irate customers, people not

knowing how to behave over the holiday season in particular, we're at a fever pitch. But we're still seeing continued violence, workplace violence in that regard from customers. So from the Retail Industry Group space, I'm seeing that. Now, if I look at unions, every single negotiations are bringing forward lots of policies concerning workplace violence. They're asking for really something that used to be a paragraph go on for three, four pages, talking about workplace safety, et cetera.

Our response on the employer's side is, "Hey, we're already doing this. Here's all of our workplace safety things we're doing. Yeah, we'll have a committee, but we're working on it hard, et cetera." So I think it's the level of focus from the labor unions, rightly so, and it's level of focus for employers. We're looking at it and we're saying, "Okay, are our plans appropriate? Are they updated? Are they doing what they're supposed to do?" And they're being vetted. They're being really looked at closely. So as you know, you and I work together more in those instances.

Karl Kumli:

Absolutely. And one of the things that we're seeing is really a focus on communication, making sure that employees are clear on what the policy is, and what their rights and responsibilities are. Have you seen any kind of increase either in the retail space or in the labor space, about making sure that employees better understand who to report to, and what to report, and how to react to situations like this?

Laura Pierson-Scheinberg:

That's a really good question. So I see it kind of twofold. Number one, the message continually is don't be a hero in the event of an incident. So whether it be, if there's a workplace violence incident going to occur, get a manager involved for the deescalation issues. Don't put yourself out there. And then on the property theft issues. So a lot of workers get very frustrated about there being shrink and there being theft, and they want to intervene. And a good solid retail policy that we always encourage is, do not. Your safety in life is not more important than any merchandise for which we sell, so please don't engage.

So in that respect, on that side of the house, it's about don't engage, and reminding folks of that. On the other hand, it's about reporting structure and that kind of thing, and who's responsible for what. I mean, in negotiations I had just this week, we had had an exchange about get the manager involved. And we do not expect this of you, and who is responsible for what. So I think that's on the top of everyone's mind is being very, very clear on what roles are, and what responsibilities are within that.

Karl Kumli:

I think that makes a lot of sense, and it speaks to a lot of the folks who are better addressed by companies that really lean into the ESG framework, to highlight the different needs and different capacities that different

employees might have. There's a difference between an employee like myself, I'm a cisgendered white male, I weigh almost 200 pounds. I stand about six feet tall. And things that seem threatening or dangerous to me, may be very different for someone who is gender-nonconforming, 5'2" and 120 pounds. And using these opportunities around workplace violence and reporting, and putting together comprehensive policies, gives us an opportunity to really use the ESG framework to let managers better address the individualized needs of their employees.

Laura Pierson-Scheinberg:

And I think it's about training. It's about the dialogue, knowing the expectations. And everybody has their own lens because... And it has nothing to do with how you present physically. It could be something that you're experiencing otherwise. So there's lots of considerations from a DEI perspective and otherwise, that we have to consider. And that's why this group is so great because we're all coming together from all of our own vantage points and practices, to really bring forward this holistic approach of how to analyze it. So from my perspective, I'm always looking for a positive employee engagement. Are employees engaged? Are they aware of what's going on? And then of course, we have our other group members as well. So anything else on the social aspect that you think there's an interplay there from the workplace safety that we haven't covered?

Karl Kumli:

I really think the next piece bridges nicely between the social component and the governance. Because in addressing the various needs and the backgrounds that people are coming from, one of the really important things for employers to consider when they're drafting these sorts of plans, is to know that when OSHA or another enforcement agency comes to the site to respond to a complaint or to investigate an incident, they will ask for workplace violence protection plans or environmental safety plans. And the agency will hold the employer to the standards that the agency has promulgated in regulation, but they will also hold the employer to these plans. And so making sure that corporate governments and local management have engaged everyone to develop a plan that really is usable and sustainable going forward, I think is a key part of the governance aspect of this.

Laura Pierson-Scheinberg:

Yeah, support from key leadership, right? That's critical. And knowing which leaders are responsible for what, and available on the ready. And that everybody's off the same sheet of music and talking as to what the plan is, et cetera. So the communication is always key. What about the consistency of enforcement standards? What are you seeing there?

Karl Kumli:

The biggest thing that we're seeing on enforcement is making sure that

there are clear chains of command and clear lines of communication for employees to report, whether it's directly to their immediate supervisor, but also providing clear guidance for employees if there's an issue with a direct supervisor that needs to be reported.

A lot of employees have reported unsafe situations, or a feeling of lack of safety to OSHA because their immediate supervisor was not responsive, and they didn't understand the programs or policies that may have already been in place, and frequently are in place to report that. But it's a lack of knowledge, not a lack of policy. And I'm curious from your perspective, especially on the retail side, where so much of this can be really diffuse. What are some successful tactics you've seen employers take in making sure that chains of communication stay open?

Laura Pierson-Scheinberg:

Well, I think it's about regular communication on the topic. So obviously there's routine safety meetings that occur and reminders that occur in that regard. Refresher trainings is always critically important that you're seeing that, and that it's fresh, right? It's fresh and it's accurate. Because unfortunately in retail, you see a good bit of turnover, and so you want to make sure that the new people to role understand who they are supposed to talk with, and that, that role is filled and in the chain of command and in the loop. So I think it's training and it's constant reminders through startups, and those routine safety meetings, from the retail perspective.

Also, as I look at it from the union side, and I put on my union hat, my labor hat. Unions are saying the very same thing. So, often a leverage point is, "Hey, there's a safety incident where we don't believe you were following the CBA, or you're not following OSHA, so I'm going to call in OSHA. I'm going to call in a complaint." From the union's perspective, that's a common chain of how things happen, sometimes warranted, sometimes not. Sometimes miscommunication, sometimes there's an issue. But it is a well-known trigger that unions will pull with good cause. So I think it's all about communication and being ready. I mean, one of the things that I would ask is, if we were to tell them a takeaway on how we should give clients sort of that nugget of what they should do in the safety space to be best prepared, what would you say?

Karl Kumli:

I think the communication issue that you just highlighted, it really is the takeaway. Because in our practice group and in dealing with OSHA, we find exactly what you were just saying. Is that, if someone doesn't know who to report to internally, they'll report to OSHA. Because they know that OSHA is out there and here to help on safety concerns. And so if an employee feels like there is a responsive chain of command and there is somebody that they can talk to get something accomplished. And that's, I think really the key is that, there needs to be both the communication channels, but also that those communication channels need to be responsive to employee issues and employee concerns.

And it may be as simple as identifying where the breakdown in the communication was, and clarifying with the employee that something that seemed out of line was appropriate based on the needs at the time. And you spoke to that really well when you were talking about the fact that sometimes these things really do just constitute a communication breakdown. But when it gets elevated to OSHA, it's become a much more concerning issue, both for the employer, and it engages the employee in a process that is time-consuming, and really can be pretty novel and confusing if they're not aware of how the process usually works. So I think it's something that being the first point of contact before employees feel like they need to reach out to OSHA, is really the takeaway that I think employers across industries and across sectors are best served to take away from this conversation.

Laura Pierson-Scheinberg:

And in my practice, I mean, I'm constantly focused on employers, making sure that they're giving employees what they need. And one of those critical needs is though, it's really a right to feel safe at work. And so we want to make sure that that is a basic tenet. When I look at what my takeaway for these folks is when we're looking at vulnerability audits, so we talk about vulnerability audits in the positive employee relations space. We talk about it in the DEI space, we certainly talk about it in the OSHA space. We are looking at it from a standpoint of a holistic vulnerability assessment.

And I think depending on your organization, you can look at the areas where you're weak, or you can look at it across practice groups and do a vulnerability assessment, sort of wholesale, looking at it from every perspective and lens. Whether it be pay equity and all of those things too. So today we're talking about safety, and I think we've given a lot of food for thought. Anything to add before we close out for the day?

Karl Kumli:

I think the last point is exactly what you were just touching on. So many of the complaints that we receive when folks file with OSHA, highlight things beyond the scope of workplace safety. It goes to the way people are treated in the workplace, feelings of inequity, and differences between the ways folks are treated. And highlighting all of those issues as contributing to what employees think of in terms of a feeling of safety at work, and a feeling of security at work more broadly, really drives some of the work that we end up doing in the health and safety group, even though it might not be directly related to OSHA's jurisdiction. So I really appreciate you bringing those kinds of issues in. Is there anything else that from your side, that you think is a key kind of area of ESG that employers can lean into to make life easier on themselves?

Laura Pierson-Scheinberg:

Well, the framework has been gaining a lot of attention from the ESG perspective. This isn't stuff that you haven't been doing forever, that we've

been focused on these issues as employers as a whole. And we want to demystify it, and don't be overwhelmed by the framework and how you fit in, and really use it to your advantage. Lean into it and use it to your advantage to show employees that you care. Don't be scared to tout the way that you're on the environmental side of the sustainability issues that you're doing, whether it be packaging with bags, or sourcing resources in a sustainable way, those kind of things. Whether it be on the social side or the governance side. So I would just say use the framework to make your organization better.

Karl Kumli:

Laura, thank you so much for taking the time to talk with me today. And I think this really goes to the breadth of what ESG can do for companies, and the ways that they can use the various tools available to them to cover a lot of interesting and necessary areas.

Laura Pierson-Scheinberg:

I can't agree more, Karl. And thank you so much for your time. I always appreciate giving a chat with you.

Karl Kumli:

Likewise.

Alitia Faccione:

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