

Live from Workplace Horizons 2025: Class and Collective Action Trends — What You Need to Protect, Defend . . . and Avoid Being Sued

By Eric R. Magnus, Connie L. Chen & Noel P. Tripp

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Meet the Authors



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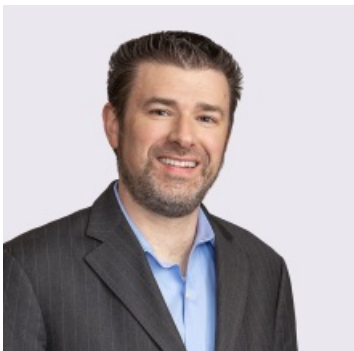


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Details

June 10, 2025

Welcome to a special edition of *We get work*®, recorded live from Workplace Horizons 2025 in New York City, Jackson Lewis' annual Labor and Employment Law Conference. Over 500 representatives from 260 companies gathered together to share valuable insights and best practices on workplace law issues impacting their business today. Here's your personal invitation to get the insights from the conference, delivered directly to you.



Transcript

INTRO

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Alitia Faccone

Senior Director, Business Development

Welcome to *We get work*® Live from Workplace Horizons 2025. I'd like to welcome all three of you to our podcast studio this afternoon. Eric Magnus, principal in Jackson Lewis' Atlanta office, Connie Chen, principal in our Los Angeles office and Noel Tripp, principal in our Long Island office. Welcome all of you, and thank you for taking the time this afternoon.

I'm going to start with Eric only because you are on this side of the table. Why don't you tell us a little bit about yourself, where you're from and your practice at Jackson Lewis.

Eric Magnus

Principal, Atlanta

My name is Eric Magnus, I'm a principal in our Atlanta office and I'm one of the co-

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Related Services

Class Actions and Complex
Litigation

chairs of our Class Action and Complex Litigation Group. I probably spend, I don't know, 75% of my time litigating class and collective actions anywhere in the country other than where Noel and Connie live. I don't touch California, and I don't need to touch New York because we have people like Noel, but everywhere else I can handle. I'll probably work there, handling class actions and the rest of my time doing wage and hour advice, as we'll discuss. It's still the case that most of our class actions are wage and hour cases, although that is trending a little bit, and we'll talk about that.

Faccone

Connie, tell us a little bit about that California class actions practice.

Connie Chen

Principal, Los Angeles

Like you said, I'm a principal in the Los Angeles office. I've been practicing employment law in California since 2010. I split my practice between single plaintiff cases on the traditional discrimination, harassment, retaliation and wrongful termination cases, but certainly a substantial portion of my practice is class action and PAGA representative action cases. The California Private Attorney General Act has provided a lot of opportunities for employees and their counsel to bring claims. I try to keep the split about 50-50, but sometimes it definitely skews more towards the class and PAGA side. I'm excited to be here to speak with you all today.

Faccone

We'll learn a little bit about what Chris Valentino talked about this morning, which is what PAGA is. Noel, New York, and you, what can you tell us?

Noel Tripp

Principal, Long Island

Right. That's the 50th state since my colleagues have covered the 49. I have been a resident in our Melville, Long Island office since I was a summer associate in 2005. I was built in this lab for better or for worse. I primarily defend class and collective action wage cases, predominantly under New York labor law. As Eric referenced, there are lots of states where federal law is the focus and the sole focus; in California, they don't ever bother to even touch it. We tend to do a little bit of both within the New York practice, but I'm predominantly focused on defending New York labor law claims on a representative basis.

Faccone

We're talking about class actions, and the title of your presentation talks about what you need to do to protect and defend our clients. Connie, can you tell us a little bit about what that presentation is and why it's important to talk about that at Workplace Horizons 2025?

Chen

We are seeing in California and around the country a surge in these types of cases, not just in the traditional wage and hour context. Also, there are other types of class action threats that we'll talk about later on today regarding data privacy and AI. The

law is constantly evolving, and new theories are regularly being propounded that expose our clients to risk. We'll be talking about, in addition to wage and hour and other class action threats, procedural developments that impact how we defend and how we litigate the cases. Finally, preventative and defense strategies to minimize risk both proactively and if a claim is filed.

Faccone

Eric, that's a pretty long list of issues that you're covering in your presentation. What are you hearing from employers? What are you hearing from your clients? How did you select those issues? What's rising to the top?

Magnus

We pretty much decided on covering the topics that are trending. Even in the wage and hour space, like Connie said, there are constantly new theories developing. In this past year, we've seen certain types of claims, like exempt employees who should be non-exempt during the time that they're training to do the exempt job. That's not a theory I had ever seen two years ago, so things like that. Most of the substantive wage and hour topics we're covering are going to be things that are new. A lot of cases that are in the wage and hour space surrounding remote work and the impact of the travel time regulations on remote work. Before, folks were working, such a large part of the workforce was hybrid or working from home. Those were tangential issues, not things you saw mass class actions about. Now that's a seriously trending area in the space.

Connie also mentioned there are certainly trending areas that are not wage and hour cases. There are class actions right now on both sides of the DEI divide, like employees who are upset about decisions made pursuant to DEI policies and then cancellations of DEI policies. We have to counsel clients on that and work through litigating and defense strategies in those kinds of cases. The way we decided was we were spending most of our time talking about newer things and the trends that we're seeing in the class actions space.

Faccone

Noel, Eric described how many new trends are really coming into this practice area. What are some of the biggest changes that you've seen from last year? How are employers coping, and how can you help them keep up?

Tripp

As Eric alluded to, there has been a shift in the federal administration. Employers have for 10 to 15 years now been complaining about, and it's at the intersection of wage and hour law and leave law, the patchwork of laws. They've been expanding their footprints and bumping up against strangenesses in Maine, Idaho or Illinois. Even if they have a California-centric view, they might still have a foot fault. The more the federal administration seeks to roll back floor regulations – the setting and maintaining of a floor, the minimum wage hasn't moved since 2009, the more states and the heat map tracks the coasts, but not perfectly. You'll see them weighed in, but they don't weigh in through collaboration. That becomes one of the hardest things to keep track of at the intersection. During COVID-19, there were a million cutting-edge issues. Then, the return to work debate for most organizations, wage and hour law

lags, because it looks at the work that's in the can. Now we have a few years of work that's in the can under these new paradigms. You let people move away, you let them structure their job remotely, you had them travel or whatever the case may be. Now, where those have accrued, the plaintiff's bar has caught up to them, and that becomes part of the toolkit.

Faccone

Is there ever any catching up to the plaintiff's bar? That's the question.

Magnus

One other thing to add is, in this past year in particular, there's been one massive procedural development, which obviously we've spent a lot of time on this podcast talking about, Chevron. That affects the class action space pretty significantly. A lot of our clients question whether anything under federal law is "the law" unless it's in the statutes. That's an entirely new phenomenon over the last year. We don't advise it, and we talked about this in our presentation. If clients could question any regulation and say that it's just the administration or the DOL's opinion and it's not entitled to deference, you can do a lot of headway with that kind of argument. There's no actual alleged unlawful practice because the practice isn't even unlawful unless you believe DOL. That phenomenon and the procedural issues have entirely come up since last year.

Chen

Tacking onto that, there are constantly evolving issues regarding the enforceability of arbitration agreements and class action waivers, which continue to be met with a lot of hostility, certainly in California and elsewhere in the country. PAGA standing issues under the Private Attorney's General Act, there has been a split in the appellate courts in California about so-called headless PAGA claims. We're closely monitoring that.

Our job for our clients is to stay ahead of these issues, to anticipate what the plaintiff's bar is going to do, to spot what's coming down the road and to provide practical guidance on how to respond or proactively avoid having to face these issues in a claim or lawsuit. We certainly have a ton of resources, California-specific and otherwise. We have a California Class Action and PAGA Group where we are constantly sharing knowledge and developments by the day and week. When the PAGA amendments were passed in June of last year, we formed a round table where we gather weekly to share experiences and discuss how the amendments are playing out on a practical level. It's still a work in progress.

Faccone

For the folks that are here at the conference and will be listening to you, and for the folks that are going to be listening after the conference on this podcast, what would you share or what would you say are some key takeaways people should know about the state of class and collective actions in 2025? Eric?

Magnus

The main thing, and this is counter to everything else you've been hearing, is that nothing has changed like what you're hearing in a lot of other sessions, like the floor is ripped out under, whether it's affirmative action or anything like that. With our practice, things just keep on keeping on. Yes, the theories change, and there are different kinds of cases that are being brought. However, the steadiness of our class and collective action practice doesn't seem to veer or change that much.

If I'm a client, I would take notes on the substantive things that we're talking about, then go back and figure out whether you have anything to worry about. Prevention is always the best way to avoid getting sued in these kinds of cases anyway. Prevention includes at the state level. Connie and Noel have to deal with this way more than I do, but some of these state law theories are really cockamamie sort of things. You couldn't just sit down and rationally think when trying to audit my pay practices, that this is something I'm going to think of. You've got to know from people like Connie and Noel what spot to look for. That's what I would do if I were taking something home from this to try to keep myself out of trouble.

Faccone

What about California? What's a good key takeaway for folks facing these issues in California?

Chen

Class and PAGA risk are going to continue to be big issues. Like Eric said, compliance is key, especially in response to the language of the most recent PAGA amendments that are the subject of another panel here today. It's about making sure your policies and practices are in compliance, doing regular audits and making sure those audits are privileged to the extent possible. Also, making sure that you're able to use them as evidence if that opportunity presents itself. I always say an ounce of prevention is worth a pound of cure, and even more so in California and in this climate overall.

Faccone

Noel, New York, and even perhaps how do you work with your colleagues across the rest of the country to make sure not just in Eric, Connie and your areas that we're helping our clients?

Tripp

To Eric's point, these are old hands, and some of these are eternal questions. Having a dispute resolution program and arbitration, a compliant multi-state class waiver program, probably within arbitration, but maybe without, is great. PAGA can take it away on a day, and the mass arbitration risk is there. It's never a substitute for that substantive compliance. Some of those are just the multi-state diligence of eye-dotting. The harder ones that are eternal to me are, unlike other areas, nobody's business is or ought to be premised on discriminating against anyone or harassing anyone. However, everyone's business is premised on a labor budget somewhere that's bumped up against these Byzantine rules. Now, with Chevron, even what we thought we knew about them is maybe ripped up. That's more of a litigation notion and fun fodder for us in the cases that exist. Rather than saying, oh, yeah, let's take a hyper-aggressive position and throw the DOL out into sort of the mania of early 2025. At the

end, there'll be no NLRB and there'll be none of it. That's still the focus.

Then, finding the tensions that you have to live with. To me, one of the most fascinating things is that the answer to the same question across Jackson Lewis' clientele and across the different thoughtful clients is so different. The timing of change, the ability to change and the implementation of that change are going to vary by sector and geography. Even within an organization, especially one that's grown by acquisition, as so many of these have, they don't know what they bought or just looked at what they bought. They say, we're doing it over at ABC company this way, you guys blessed it and it looks great. What are we supposed to do with this? Did you do due diligence? They will say, kind of, but then we just sort of bought it.

Faccone

The law is rarely black and white and often gray, as you've all just described. Noel, Connie and Eric, thank you so much for joining us this afternoon in the studio. We wish you luck with the rest of the conference, and we'll see you in 2026.

OUTRO

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