

Live from Workplace Horizons 2025: Workforce Analytics — Do Your Data-Driven Personnel Assessments Place You at Risk?

By Scott M. Pechaitis, Christopher T. Patrick & Daniel V. Duff

July 1, 2025

Meet the Authors



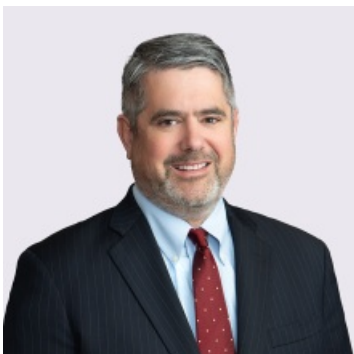
Scott M. Pechaitis

Principal
303-876-2201
Scott.Pechaitis@jacksonlewis.com



Christopher T. Patrick

Principal
303-876-2202
Christopher.Patrick@jacksonlewis.com



Details

July 1, 2025

Welcome to a special edition of We get work®, recorded live from Workplace Horizons 2025 in New York City, Jackson Lewis's 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

You're listening 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. We'll see you in 2026.

CONTENT

Alitia Faccione

Senior Director, Business Development

Welcome to the We get work® podcast studio, Live from Workplace Horizons 2025. In the studio this afternoon, Scott Pechaitis, Dan Duff and Chris Patrick.

Chris, I'd like you to share a little bit about what your colleagues and you do here at Jackson Lewis, and the type of law you practice.

Christopher Patrick

Principal, Denver

The three of us are all principals in the firm's Affirmative Action Compliance, OFCCP, Defense Group. We have historically supported federal contractors in their workforce analytics, affirmative action plans, pay equity analyses and things of that sort. Bringing some order to the data to inform employment

Daniel V. Duff

(Dan)

Principal

631-247-4656

Daniel.Duff@jacksonlewis.com

Related Services

Data Analytics

decisions.

Faccone

The title of your presentation this afternoon was ‘Workforce Analytics: Do Data-Driven Assessments Put you at Risk?’ Can you share a little bit about what you covered in your presentation and what's happening now?

Patrick

Since January of this year, we've seen a lot of changes when it comes to using data, in particular related to equal employment opportunity or EEO analytics. On January 21st, Executive Order 11246 was revoked. There has been an increased focus on preventing ‘illegal DEI.’ Employers are really struggling to understand what they can do, how they can evaluate what their risks might be, and what they might still be able to do in terms of diversity-related analytics or advancing those types of initiatives and concerns in their business. Our section really covers that.

We started with a discussion of the background on what the use of analytics has been. We pivoted to talk about what the risks are in this current climate of analyzing EEO-related demographic data. We talked about some benefits of doing so in terms of Title VII compliance and being able to certify that you're not violating any anti-discrimination laws. Finally, some mitigation strategies on what might be the right way or the best way to accomplish what you want to accomplish while avoiding what you want to avoid.

Faccone

Thank you. Dan, Chris just spoke about the many changes that have taken place over the last several months. When you got together to plan this presentation, what rose to the top? What kinds of issues were you thinking about? Quite frankly, how can data still be helpful to employers?

Daniel Duff

Principal, New York City

It was difficult because the changes are happening so quickly. When we first met, we talked about things, then two weeks later, things had changed. That was the hardest part. It's that environment that's making things very difficult for employers, that rapid change. You come home from work, you put on the news and there's another executive order. The environment changes.

The courts have intervened in a few cases involving the EOs we're talking about, but not fully. There's no current nationwide injunction on the executive order that Chris was referring to. It revoked 11246 and created ‘illegal DEI’ as a term. That's something that employers need to avoid if they have a government contract, in particular, or they're getting grants.

The biggest focus for employers right now is, look, we understand those DEI risks, but what can we still do that we used to do, for example, under 11246? Can we run adverse impact analyses in RIFs? Can we run promotion adverse impact

analyses? Can we run compensation analyses? That was a big part of the presentation today.

Faccone

Given the uncertainty, Scott, and how people are feeling, Dan touched on this, but what issues do you believe really resonated with the audience today? What were they really concerned about?

Scott Pechaitis

Principal, Denver

They were really concerned about the government enforcement and potential compliance checks to see if companies are using their data in unlawful ways, like if they're actually basing employment decisions on the results of gender and race analyses, which could get them into hot water. That really resonated with the audience; it's what they're really concerned about. Talking a lot about the use of analyses, how to safely use analyses, the attorney-client privilege and making sure they're protected are all the themes that really stuck with the crowd today.

Patrick

Can I add on that? A portion that resonated was also the teams that were involved in the various aspects of this. So much of the HR analytics and the EEO-related statistical work has been pushed out of the legal departments historically in terms of DEI dashboards, recruitment sources and evaluating what my pipeline looked like. That's when the focus has been on how to increase representation, and do that in a way that's non-discriminatory.

When we're shifting from an HR operations or a talent operations lens into a risk lens, it takes some re-imagining of who the stakeholders are and who drives projects in ways that not every business has really thought through in this space.

Alitia

So, how do you advise them in that kind of circumstance?

Patrick

I start with we need to identify the problem that we're searching for a solution to. If the problem we're trying to solve for is mitigating potential liability or reducing classes or claims by identifying EEO barriers proactively in order to comply with the anti-discrimination laws, to do that proactively and be able to ultimately assert or certify should the contract clause make its way into our contracts, that's a different ball of wax. That is a risk identification and a risk mitigation focus. With that lens, this is about getting legal involved. This is about making it a legal-driven process and not a business-driven process.

Faccone

Great. Scott, back to you. We just heard from Chris. What would you share then as some of the key takeaways for your attendees for the presentation, but also for our podcast listening audience? What would you tell them?

Pechaitis

A number of things. First, you need to know the laws where you operate. There are several state laws that implicate the ability to collect certain data, particularly for applicants and gender and race data. Knowing what laws operate where, what you're allowed to do and where you might have some challenges is important.

Second, it's like what Chris and Dan were both saying, it's important to know your purpose. This really gets to the heart of the attorney-client privilege. The analysis should be for a legal-related purpose—the purpose of getting legal advice. If it is, then we have a good, strong argument that it may be protected as long as we keep it confidential.

Finally, what do you do with the results? This is a key aspect here. That's really what the White House is concerned with. If you're doing these analyses, what are you going to do with them? Are you going to use those analyses to go out and make gender and race-based decisions? That is unlawful. That's why it's important to make sure you have all these things aligned so that you're in compliance with the law, you're protecting it with the attorney-client privilege, and you're not going to do anything that gets you into hot water on the back end.

Faccone

Dan, how is Jackson Lewis helping its clients and employers in this really, really difficult time?

Duff

One of the key things, and this came out today, is that it's really important to understand what your corporate values are and consider not only the legal risk, but the employer relations risk that most employers are facing right now. An employer could take the position, look, we're going to drop our DEI programs entirely. If you've been dedicated to DEI for the last 10 years, that's going to send a message to your employees. What is that going to do to your workforce and your business, and the publicity that you might get? The most important thing that we said is, well, we can tell you what the law is and help you navigate that. We can keep you up to date, because it's difficult to stay up to date.

Faccone

We've been hearing a lot about the word proactive over the last couple of days, and it sounds like that's a word that can apply here as well.

Scott, Dan and Chris, thank you so much for stepping into the studio and getting behind the mic today, and enjoy the rest of the conference.

OUTRO

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 to on Apple Podcasts, Spotify and

YouTube. For more information on today's topic, our presenters and other Jackson Lewis resources, visit [jacksonlewis.com](https://www.jacksonlewis.com).

©2025 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>.