

Podcast

Live from the 2022 Corporate Counsel Conference: Ep. 2

By Monica H. Khetarpal, Kimya S.P. Johnson, Tanya A. Bovée, Michael A. Griffin & Michael D. Thomas

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Meet the Authors



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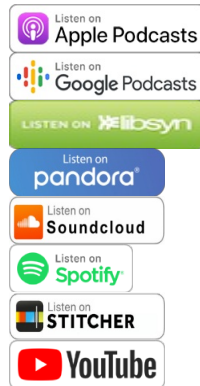


Details

April 19, 2022

Welcome and thank you for joining us for this special edition of We Get Work, live from Miami, Florida and CCC2022, Jackson Lewis' premier workplace law conference. What follows are two short episodes on the Diversity, Equity and Inclusion plenary session and the attorney wellness presentation—programs that reinforce that employers should continue to prioritize human capital in 2022 and beyond.

Jackson Lewis P.C. · Live from the 2022 Corporate Counsel Conference: Ep. 2



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' premier workplace law conference. What follows are two short episodes on the diversity, equity, and inclusion plenary session in our Attorney Wellness Program, programs that reinforce that employers should continue to prioritize human capital in 2022 and beyond. 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.

Kimya Johnson (00:45):

Thank you. So I'm Kimya Johnson, I am the firm's Chief Diversity, Equity and Inclusion Officer, and what that means is really I'm responsible for building and implementing the firm's strategic plan as it relates to implementing diverse, equitable and inclusive practices throughout all of our offices. I'm also a principal in our corporate diversity counseling practice group and have the opportunity, at times, to be able to help our clients navigate the DEI landscape as well.

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Alitia (01:14):

Monica.

Monica Khetarpal (01:16):

And I'm Monica Khetarpal, I am in our Chicago office and I am a member of our Diversity Practice Group and co-chair of our Higher Education Practice Group, as well as true-and-true litigator.

Alitia (01:29):

And Tanya.

Tanya Bovée (01:30):

I'm Tanya Bovée, I'm the Office Managing Partner of the Hartford, Connecticut office, I sit on the board and one of my areas of strategic focus is diversity, equity and inclusion. My practice is advice and counsel, affirmative action, litigation, and then DEI strategic planning.

Alitia (01:47):

Thank you. Kimya, back to you. The title of the presentation you gave today was "Diversity, Equity and Inclusion At Work". Can you please provide our listeners with a brief summary of what you covered during your presentation and why it was important to present this topic at CCC today?

Kimya Johnson (02:03):

Really good question. So we know that the landscape around diversity, equity and inclusion changed and changed drastically after the death of George Floyd, the summer of racial reckoning that ensued, all while navigating COVID, and there have really been changes in how all of our organizations are approaching not only this subject, but frankly their employees and their workplaces in general.

So what we wanted to do and what we actually did is focus our participants at the conference today around understanding what is the context around DEI? How has it changed and shifted? What is it that they need to know as they are understanding and preparing to not only give legal advice and counsel around issues that might fall under the DEI umbrella, but also give them some real practical advice around the types of programs or ways or assessments and the different ways in which organizations are approaching implementation of DEI.

Alitia (03:00):

Fabulous. Monica, what are some of the issues that you thought resonated with the attendees during your presentation today?

Monica Khetarpal (03:07):

I think the attendees wanted to know how the law is changing and in some ways, it's not changing, and in some ways, it's changing very radically. Here in Florida, there's legislation that has been talked about a lot in the news and we got

questions about that. "How do we need to be careful of how we're talking about DEI and training about DEI? But on the other hand, how can we implement DEI strategies and stay within those guardrails?"

Alitia (03:32):

Tanya, what do you believe are the key takeaways that organizations should keep in mind when addressing these issues when they return back from the conference?

Tanya Bovée (03:41):

That's a great question. I think thinking through strategic planning, being really thoughtful about the how, the why and when, thinking through what the legal risk might be and what the organization is really willing to take on in regards to legal risk. It's 2022, and so we think that employers are willing to be more aggressive in this area, but making sure the in-house counsel has a seat at that table and is able to really advise the business on that and also thinking about including attorney-client privilege.

Alitia (04:13):

Fantastic. Kimya, can you tell us a little bit more about why DEI is so important in 2022?

Kimya Johnson (04:21):

Absolutely. So we know that the context around diversity, equity and inclusion organizationally has shifted, and what we want to ensure that folks understand, particularly lawyers, is how are we able to meet the demands of being a trusted legal advisor, having a firm grasp of what the law is, but also recognize that there is an evolving aspect to DEI as well? So some of what we talked about and highlighted is that we have to understand, really, three things around the evolution of DEI right now.

First, we have to understand that the key stakeholders, the people who are involved in DEI these days, has changed, right? It's no longer a programmatic imperative that's limited to HR or even the employment lawyer or the folks who are focused on employee engagement. This is really something that boards, CEOs, larger business communities, C-suite, and obviously communities are very much engaged in and are driving. We're also seeing legislation at the federal, state and even local level, so we have legislation and legislators, executive branch and a whole host of folks being involved with really defining what we're talking about when we're talking about DEI in ways that we hadn't seen before and it's translating differently and daily within our workplaces.

The second thing is we've seen evolution as far as DEI itself, and we know that this is an imperative that has been in place for 45+ years as far as organizational DEI, really since the implementation of Title VII, Civil Rights Act of 1964, we've really focused on "What does it look like?" when we're talking about race, gender and what have you, and these identities within workplaces, but we've also recognized that how we're framing DEI has also shifted, so we've really moved from doing DEI because it was the right thing to do to doing DEI because

it made good business, to doing DEI because all leaders need to be prepared to lead, to really seeing this as a strategic organizational imperative that affects every aspect of our business.

And then the final thing that I would say, and that we shared, was really about understanding that the accountabilities around DEI have shifted as well. So DEI is no longer siloed, right? And is no longer limited to HR and even employment lawyers, but we're really seeing metrics being created as to "How are we capturing and measuring the success of this program, this initiative or this strategy?" just like we would any other strategic business value within our organization, and then "What is our methods that we're going to employ to be able to track that progress, [inaudible 00:06:59] on that progress and then hold folks accountable to ensure that progress?"

Alitia (07:03):

Thank you. Tanya, given everything that Kimya just said, what do you think are the key legal issues that we need to be concerned with right now?

Tanya Bovée (07:12):

Well, the law still remains the same. You still have Title VII and state law, and then perhaps Executive Order 11246 if you're a federal contractor or subcontractor, which says that you can't discriminate on the basis of race or gender, but I think the top legal issues that are really coming up over and over again are, "Can we collect race and gender information?" And then the second would be, "If we collect it, what is it we can use that data for?"

And so the first one, "Can we collect it?" Generally speaking, I think that the risk is very low in that respect. Some employers are obligated to collect it for employees as well as applicants, but even for those who aren't obligated, certainly, you might lose the defense which says that you can't deny that you knew the protected class, but I think being careful about how you use the data, so making sure that we're saying that hiring managers don't have access, that we don't make decisions based on race or gender, thinking about being transparent about how we use the data, making sure that we keep the data confidential is really key.

And then as far as using the data, if the organization isn't sure, then I think you take a pause on collecting the data. Otherwise, it might be something like simple benchmarking. Maybe we're thinking about having some type of an aspirational goal. And so here, I don't mean a quota, I mean ambition. Or alternatively, maybe the company wants to get really aggressive and is comfortable taking on the risk and therefore wants to think more about a quota. And so really thinking through the legal risk in doing so and making sure that everyone is comfortable in doing that.

Alitia (08:56):

Monica, last question for you. How is Jackson Lewis providing assistance to organizations to tackle these issues? What are the tools we have in our toolbox and how can you help?

Monica Khetarpal (09:07):

Yeah. Great question again. Everything that we do is tailored to each individual client, and that's because they're all different. Every organization is different, they're in a different place in their DEI journey and they have different goals, and so we start with taking stock, "What are you looking for? What do you need? And what is your population ready for?" Some employee populations are very progressive and some are just dipping their toe in the water of unconscious bias and that's fine, so we meet everybody where they are.

And then we have a toolbox, like you said, of things we can do. There's obviously training, everything from that unconscious bias training to more innovative, aggressive, creative training, training specific to microaggressions, to psychological safety, even one-on-one training for, let's just say, individuals who can't be terminated but have to be guided in their journey.

And so that's one tool in the toolbox. Another tool is a climate survey, which is essentially an assessment of where the organization is. So, "Where are your employees? What are the issues that they see? Or do they see that you're doing something well?" And we use individual interviews, written surveys, data collection and analysis, all sorts of things, to really take the temperature of where the organization is, and then create, again, a tailored plan.

And then there's also communications. We help our clients with communications. How are they talking about DEI to employees, to their board members, to their customers, to stakeholders? That's all very important because you can do everything right and if you don't communicate it well, you could still have a problem.

So we really... We use a variety of tools like that to really, again, meet every client where they are and help them along their journey.

Alitia (10:57):

Kimya Johnson, Monica Khetarpal, Tanya Bovée. Thank you so much for joining us on this episode of We get work live from CCC.

Monica Khetarpal (11:05):

Our pleasure.

Kimya Johnson (11:05):

Thank you.

Mike Griffin (11:10):

I'm Mike Griffin, I am a principal in the Seattle office of Jackson Lewis. My practice is primarily litigation, I probably do 80 to 85% litigation, and the other part is advice and counsel, primarily in the disability leave and health management space.

Alitia (11:25):

Michael.

Michael Thomas (11:26):

And my name's Michael Thomas. I am a principal in our Los Angeles office and my practice largely focuses on a lot of wage and hour class action and PAGA litigation. I'm also actively involved in our Diversity, Equity and Inclusion Consulting Practice Group, and also the Workplace Training Group, so I do a little bit of everything, wear many hats.

Alitia (11:46):

That's fantastic. Thank you. Michael, the title of your presentation was "Redefining What It Means To Practice Law: One Breath At A Time". Can you provide our listeners with a brief summary of what was covered in your presentation and really, more importantly, why it was important to present this information at CCC this year?

Michael Thomas (12:05):

Yeah, and I think there was a colon in that title because we are lawyers so we have to have a colon somewhere within the title, but, so, a brief summary of our presentation is, we, as lawyers, we spend a lot of time in our heads, so we don't receive training to be in contact with our body, with our emotions.

We don't receive training on how to be vulnerable. We don't receive training on how to experience weakness. And so a lot of the work that we do within our profession is very difficult and very challenging and creates a lot of stress and anxiety, and because of that and because of how we're trained, we don't speak about what we're all going through, right? Instead, we're trained to just power through something, just toughen it out, when the reality of it is that when we look deep down inside, at times, we're not doing okay, right?

Many of us are walking around just saying to ourselves, "Keep it together, keep it together." Right? And so it's important to have this conversation for a variety of reasons, really importantly, so that we can engage with ourselves better as coworkers and as colleagues and really, as representatives of other people, so it can help us engage with each other better, our families and you name it.

And so one of the things that we really focused on within our presentation is "How do we, as lawyers, understand the external stimuli that we deal with and how do we respond to that?" Right? So, how do you respond to that email? You experience, typically, stress and anxiety. And what's the impact of you being flooded with stress and anxiety in your body? And all the negative things that can stem from that, whether it's alcoholism, substance abuse, you name it. And then what are some healthy tools to rethink how we respond to a stressful environment?

So we talked a little bit about mindfulness as a way of just pausing, right? That email's going to be there... The email is important, but do you have to associate stress and anxiety with that email? Because, as we mention in our podcast, your brain doesn't know the difference between you being chased by a

wild animal or you just responding to an email, right? But if you're just responding to the email, that cortisol and hormones that your body releases as if you're being chased by a wild animal and you're running, you're releasing all that stuff. When you're just responding to your email, you hold onto it, right? And that feels uncomfortable.

So what do you do? You find things and ways to mask that discomfort, right? So alcoholism masks that discomfort, abuse of power can mask that discomfort, different addictions like sex addictions, things like that can mask that discomfort. So a lot of what we focused on, and I know I'm saying a lot, is really, "How do we learn to be present with our bodies and with our thoughts so that we can make more informed decisions how we serve our clients and how we treat each other and the people around us?"

Alitia (14:52):

What were some of the issues, and Michael just enumerated many of them, but what were some of the issues that really resonated with attendees during your presentation? I mean, what did they want to know? What did they want you to tell them?

Mike Griffin (15:04):

It seemed to me that some of the things that resonated with the attendees were, first and foremost, some of the bad news, some of the really unsettling statistics that have come out about our profession and the amount of anxiety, depression, substance use disorders that occurs within the legal profession, and so we highlighted a couple of those studies that have demonstrated this, but without trying to focus too much on the negative.

What also resonated, I think was, "Well, what do we do about it? How do we respond to this?" And thankfully, the ABA has done an enormous job in putting together a task force for lawyer wellbeing, with just a mountain of resources available to us, and so we tried to distill some of that and just give them smaller takeaways that I think did resonate with them, things that may seem obvious, but people need reminders about. Good nutrition, exercise, getting enough sleep, things that seem basic, but for whatever reason, we, as lawyers don't engage enough in healthful, healthy habits.

And so I think we got a lot of requests toward the end for more information, there seemed to be real thirst for, "Okay, what else? What else is out there? What should I be reading? What podcasts should I be listening to?" So I'd like to make a plug, if I could, for the podcast that's The Path To Well-Being In Law. Bree Buchanan and Chris Newbold host this podcast, been going on for a couple years now and it's fantastic. Great resource for lawyers to listen to.

Alitia (16:32):

That's fantastic. Thank you. Michael, what other concerns were addressed or what other questions were raised during your presentation?

Michael Thomas (16:40):

Yeah, I think the other question that came up that I thought was really important is how our profession has changed, and so one of the weird things about the pandemic that many of us working at home, you could work a lot or almost all the time, and so we developed, in some ways, this pattern response that we can and are going to respond to clients all the time, so now that we're kind of not necessarily out of the pandemic, but we're returning to the workplace, there is this heightened expectation that we're responding to emails all of the time and within a shorter window of time, right? That we're just more available.

And so that question came up a lot of, "How do we actually manage ourselves knowing that our profession has actually changed?" And there's an aspect of that is that our profession has changed, but there are some things that really haven't changed, and the thing that hasn't changed is you don't have control over your external environment, but you do have some control as to how you choose to respond to your external environment, so pausing, slowing down, realizing that you don't have to do everything, right? And realizing that you can manage yourself and that you can effectively more communicate and reach out for help whenever you need to, which is something that we talked about within the presentation that we don't do as often as we really should, so that was the other thing that came up is, "How do we change to those really changing dynamics of greater responsiveness?"

Alitia (18:02):

Is there a difference between how this issue is going to affect lawyers who might continue to work at home or lawyers that go back into the office? Are there different tools and techniques that people can use depending on where they're going to be doing most of their work, what their workplace is going to [inaudible 00:18:19]?

Michael Thomas (18:20):

I think it's less about the location and more about the individual being honest and being in their integrity and being honest about what their needs are, right? Like if you do need to work from home for family purposes or whatever it might be, be honest about that because you're actually going to make better decisions to take care of yourself.

Alitia (18:38):

Mike, what do you believe to be the key takeaways now that employers and employees, I mean, lawyers should keep in mind when addressing these issues when they leave the conference or when they stop listening to this podcast?

Mike Griffin (18:52):

Well, I would say, for legal employers, for companies, for law firms, that one of the key takeaways is that change is coming and change is often difficult, and in my experience, and I think a lot of experts in this field and I don't consider myself an expert by any stretch, believe that change has to come from the top, that leadership of your organization has to demonstrate that it's okay to be vulnerable, it's okay to share whatever struggles you are having with your colleagues, with

leadership. I think that's a key takeaway, that if leadership embraces the concept and gets involved in this movement of lawyer wellbeing, that change will come more rapidly, but change is coming either way.

The second thing I would say is that something I think legal employers and leaders in legal employers can do to help that change along is to demonstrate a commitment by not just talking the talk, walking the walk. Hiring, for example, a Director of Wellbeing for the company, for the firm. That demonstrates a commitment to the importance of these issues and really trying to turn the tide against what is not necessarily an epidemic, but certainly problematic statistics about the levels of anxiety, depression, substance use among lawyers.

So I think those are probably two of the key takeaways. Some of the feedback we got afterwards was that this was one of the more helpful presentations they've attended on this topic and Michael and I are... We're not the authors of these studies, we're not the people hosting these podcasts, we're just advocates and we would love for more people at more organizations to be advocates for wellbeing.

Alitia (20:33):

Mike, Michael, thank you so much for joining us on the podcast today and to raise some really important issues and we hope you enjoy the rest of the conference.

Mike Griffin (20:42):

Thank you.

Alitia (20:45):

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