

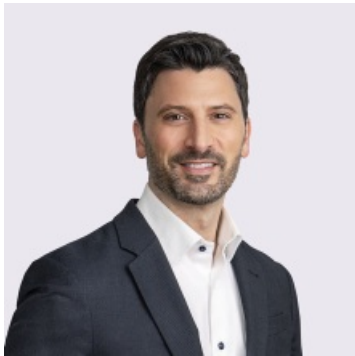
Podcast

Live from the 2022 Corporate Counsel Conference: Ep. 4

By John J. Porta, Laura A. Mitchell, Adam Y. Siegel, Felice B. Ekelman &

April 19, 2022

Meet the Authors



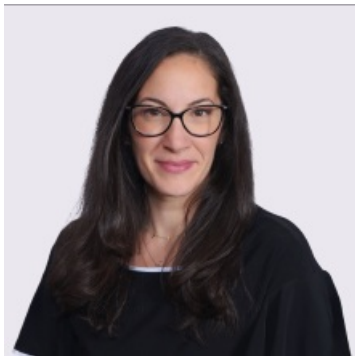
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Details

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 three short episodes on the impact of the pandemic and how it continues to shape workplace law, including our plenary session on COVID-19 trends, our program on the pandemic's influence on gender equity in the workplace and the unique and ongoing challenges faced by the hospitality industry.

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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 Council Conference, Jackson Lewis's premier workplace law conference. What follows are three short episodes on the impact of the pandemic, and how it continues to shape workplace law, including our plenary session on COVID-19 trends, our program on the pandemic's influence on gender equity in the workplace, and the unique and ongoing challenges faced by the hospitality industry. 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.

Melanie Paul (00:51):

Hi, I'm Melanie Paul. I'm a principal in the Atlanta office of Jackson Lewis, and I am the co-head of the workplace safety and health practice group.

Alitia (01:00):

Adam Y. Siegel

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Melanie, the title of your presentation today at CCC was COVID-19 Trends Expecting the Unexpected Where we Have Been and Where we are Going. Can you provide our listeners a brief summary of your presentation and why it was important to share this information at CCC today?

Melanie Paul (01:18):

Absolutely, so we've all been going through the pandemic together for the last two years and we've come a long way from where we started back in 2020. Vaccines have been prominent now, and many people are vaccinated, masks have come off. CDC is changing guidance and employers want to know what steps they need to take going forward to protect their workforce, to keep their operations going and to keep in compliance.

Alitia (01:48):

Thank you. What do you think are some of the key issues from your presentation that really resonated with clients? What do they want to know so they can move forward given everything that you've just said about where we have been and where we're going?

Melanie Paul (02:01):

Well, I think they want to know what still they might I'd have to do to provide protection. I think another issue that we discussed during the presentation was the return to work from remote and how that's playing out and fears that some employees still have in wanting to come back to the office or not, or other workplace and the accommodation process that may need to happen. The interactive process associated with that as a result of people alleging disabilities due to COVID with long COVID and those types of issues.

Alitia (02:36):

Can you tell us a little bit about what OSHA's thinking is as we move through what is probably no longer going to be a pandemic, but I think you referenced an endemic.

Melanie Paul (02:47):

Yes. So basically the agency sees as epidemiologists see, that this is going to be a long term thing we have to deal with. So at some point we will move from the pandemic stage to the endemic stage, which means it'll be another virus that we have to live with, like the flu. So how to manage that and how to address that in the workplace. So some of the things that OSHA is currently working on, they are really focused right now on healthcare, that industry and passing a final rule related to COVID-19 in healthcare settings, they are in the rule making process now and have actually reopened the record for comments and will be having a hearing on April 27th related to feedback that they have specifically asked for in ways that they plan to deviate from the proposed rule that they had in place.

Alitia (03:38):

So a lot more for employers to think about to come.

Melanie Paul (03:41):

Right, and not just healthcare actually, because they're also working on a permanent infectious disease standard, which will address more than just healthcare and will also be broader than just COVID-19. It will seek to address other airborne infectious diseases and employer preparedness as we move forward.

Alitia (04:01):

Great, so it was a long presentation with a lot of information. For our listeners and for the attendees that were in the audience, what do you believe to be the key takeaways that employers should keep in mind when addressing these issues in the organization?

Melanie Paul (04:17):

I think one of the key takeaways is communication with your workforce. Communication with them about the measures that you're taking to provide protections in the workplace and for them to alleviate any fears or concerns that employees have. Those fears and concerns are what drive complaints to agencies like OSHA that will then come into an employer's workplace and conduct a whistleblower investigation. And let's be honest, nobody wants that. So communication really is paramount. People want to know the why things are being done, what's being done for them, for their protection and why it's being done and really that goes a long way in managing compliance.

Alitia (04:55):

So important. So how else are you, Melanie in Jackson Lewis providing assistance to employers on these issues?

Melanie Paul (05:02):

Well, we have a really awesome team of attorneys across the country that work together collaboratively on these issues because COVID crosses over into lots of different areas. We have lots of teams that address COVID-19 in different areas and with state tracking of state laws. We've also got a new vaccine mandate tracker, which is tracking litigation related to vaccine mandates across the country. So definitely want to check that out.

Alitia (05:30):

And that's available on our website, is it not?

Melanie Paul (05:31):

It is.

Alitia (05:32):

That's terrific. Well, thank you so much for joining us today on We Get Work and please go back and enjoy the conference and thank you for presenting this information today.

Melanie Paul (05:41):

Thank you.

Laura Mitchell (05:45):

Hi, thanks. This is Laura Mitchell. I am a principal in our Denver office, so this is a nice little break to come to the sunshine and the beach. I am a principal in our affirmative action OFCCP practice group pay equity practice group and government contractor industry group.

John Porta (06:04):

I'm John Porta from the New York City office of Jackson Lewis. And I am in our litigation practice group and our advice and counseling practice group. So I do a mixed group of both.

Alitia (06:15):

Great, thank you. The title of your presentation today was COVID-19's Impact on Gender Equity in the Workplace, Preventing the Backslide. Can you share with our listeners a brief summary of your presentation today and why was it important to present this topic at CCC?

John Porta (06:30):

Sure. Thanks, Alitia. Basically our presentation today really focused on where we are now and getting employers to think about as we're returning to the workplace, reminding them of where we left off before the pandemic. Where we were seeing advances in terms of equity in the workplace, we saw pay equity as a huge concern for employers. We saw legislation passing and we sort of saw in the wake of the #metoo, and the Time's Up movement, we really saw a lot of attention paid to these issues.

What Laura and I wanted to address was really reminding everyone where we were, then discussing the disruption that COVID-19 had on all of those advances and reminding employers of what are some of the things that we need to be mindful of as we return to this new normal, as we return to this sort of modified hybrid work schedule and the potential impact or disparate impact really on caregivers and how the role of caregiver really took on a whole different meaning than we ever really thought of before the pandemic. So what we focused on today was really to have the conversation about what are the potential issues. And we talked about best practices, but we also talked about the potential legal risks associated with this return to work in terms of equal pay concerns, in terms of caregiver status discrimination. So really we were advising of the risks and really talked through best practices on how to not regress on the advances that we made prior to the pandemic in this area.

Alitia (08:14):

Great, thank you. Laura, what are some of the issues that were resonated with the attendees during your presentation?

Laura Mitchell (08:20):

Yeah, I think really as John and I were having this conversation during our presentation, this notion that the issues that are going to arise from the changing workplace are really long-term. They're not something that we're going to see just kind of happen now and then go away. The effects of pay inequity for caregivers potentially are going to be exacerbated over the next five years or the length of someone's career, potentially. The issues about time to promotion that maybe have stalled as someone took a step back from their career to deal with childcare at home, that's going to impact a career for years going forward.

So really about being mindful of the actions that employers are taking today and the long-term effects of those. Also I think just the notion that there doesn't have to be kind of a one size fits all and that we can talk about having a policy then that we should have a policy. We really talked about that, that you can't apply consistently, which means you have to take a step back and think mindfully about the situations that you want that policy to encompass so that you can implement it and you can advance it equitably across individuals that have a number of different types of situations.

I also think kind of this notion about, we talked about unconscious bias, specifically proximity bias, and how we actually think that's really going to come into play going forward, that we talk about biases in the workplace all the time, but really the fact that managers need to learn how to manage a new population that's not sitting in front of them every day. And so proximity bias really is going to, I think, and John, we talked about this, kind of come to the forefront of issues as we go forward.

Alitia (10:13):

Great, thank you. John, you talked about why it was an important to address this topic at CCC. What are some of the key takeaways that our attendees here should take away from the conference and for our listeners who weren't at the conference, what do you want them to know? What should they be thinking about?

John Porta (10:31):

I think key takeaways, because remember the prize is ensuring that caregivers coming back to the work place, that we have a place for caregivers and that we're being mindful of this new work environment.

Some of the things that we... I think the key important things to be thinking at about as an employer really is first looking at our menu of policies and benefits, right? What options do we have out there? Are we clearly communicating our policies in terms of leave policies, whether it's a remote work policy. Are we also looking at what other... what else is in that suite of benefits that we have? Do we have subscriptions to sort of Care.com? Are we offering that, are we offering sabbaticals or whatever it may be, what are options do we have that's taking into consideration that a lot of our employees have paid work and they also have a lot of unpaid work that they're responsible for handling? So one, it's taking a look at that.

Then two is also really de-stigmatizing use of those policies, use of flexibility, right? Because I think that sort of is where are your manager training and where

you sort of have these discussions, senior level discussions, managerial discussions about the workplace and it's that de-stigmatization. That's a difficult word to say. It's also making people feel comfortable about working remotely a couple days a week, or taking that leave or saying, "I need to take a couple steps back." But that stigma is something that I think not only was it a stigma of taking leave, but also the stigma when that person comes back to work, reentering the workforce, are we being thoughtful about making sure that person feels comfortable and that they're going to be able to rise to whatever level they want to rise to.

Alitia (12:15):

Laura? How else are you and John and all of the other attorneys at Jackson Lewis providing assistance to organizations and employers to address all of the issues that you spoke about today?

Laura Mitchell (12:27):

Yeah, that's a great question. I think there's kind of two buckets, right? The traditional sense we can do policy review, policy development, handbook review, benefits, all of that type of work, helping defend claims in the event that they arise. Hopefully they don't, because we're going to be doing this good proactive work.

But in the nontraditional sense, we can help do pay equity analysis, looking where the organization stands right now from an internal equity standpoint, help develop pay setting practices that we can adhere to going forward so that we can maintain the internal pay equity that we have. A lot of organizations have diversity, strategic diversity initiatives. We have unique skill sets to help analyze diversity data. Female representation in the workplace is at the lowest since it's been in 1977, since 1977. We can help organizations achieve and work towards those strategic initiatives by attracting, retaining, working on succession planning programs for organizations to help achieve those diversity metrics as well.

Alitia (13:35):

Does it matter what size organization or how many employees to do some of this work or does this apply equally across the board to everyone?

Laura Mitchell (13:43):

That's a fantastic question. And it applies across the board. Our services are scalable just because you have a few number of employees or a handful of employees doesn't mean that we still can't help you with the analytics. We may not be doing statistical robust analyses, but we can still help you develop those plans and address those issues.

Alitia (14:03):

Fantastic. Thank you, John. Thank you, Laura for joining us on this episode of We Get Work, and I hope you enjoy the rest of the conference.

Laura Mitchell (14:11):

Thanks so much.

John Porta (14:11):

Thank you.

Felice Gomen (14:14):

I'm Felice Gomen, I'm a principal in the New York City office. I have a varied practice ranging from litigation and advice and counsel in one of the areas I focus on is the hospitality industry. Adam?

Adam Siegel (14:29):

My name is Adam Siegel. I am a principal in the Los Angeles office and my practice focus is on wage and hour class actions along with individual discrimination cases as well and I also do quite a bit of advice and counsel for my clients in the space that I litigate.

Alitia (14:47):

Thanks for being here. So today you both presented and conducted our hospitality round table here at CCC. Can you provide our listeners with a brief summary of what was covered and why it was really important to raise these issues and have this hospitality round table here at CCC 2022?

Adam Siegel (15:05):

Well, as many people know COVID-19 hit the hospitality industry particularly hard. So we wanted to cover issues relating to the recruiting and the retention of employees, because that has obviously been a very difficult issue for the hospitality industry. So we covered a bunch of varying ideas and concerns that employers have been having in hospitality industry. We talked about early earned wage access for employers, as a way to recruit and retain.

We talked about concerns with respect to the unions coming in and being aggressive and how that's impacting the recruitment and the retention of employees. We talked a lot about... What else did we talk about? Talked a lot about wellness programs and other benefits that employers are giving to their employees as another tool or mechanism to help with recruitment. I think those were sort of the main topics. A little bit of wage an hour in terms of FLSA changes as well in terms of making sure that we're compliant with the laws.

Alitia (16:13):

A lot of issues obviously affecting hospitality employers in 2022. Felice, what were some of the issues you think that really most resonated with our attendees during your presentation and what did they want to know from you and from their colleagues in the room?

Felice Gomen (16:28):

Well, first of all, let me backtrack and just say what we mean by hospitality. We're talking about employers in the restaurant industry. We're talking about employers in hotels, and we're also talking about the fitness industry. That is the scope of the

Jackson Lewis hospitality industry. We had representation from a broad group of clients that are doing business in these industries. I think what they wanted to know from us is what we're hearing from all of our clients and that they wanted to know from each other, what they were doing about these issues.

One attendee talked about unemployment as being at an all time low and cited today's figures and trying to identify ways in which employers can be best in class and unique and distinguish themselves either through wage programs, ways in which they manage tips and service charges, and also ways in which they can encourage folks to stay through a DEI program, through a program of educational support. It was an interesting and robust conversation about all the different avenues that exist for employers who are interested in really putting their minds to coming up with some creative ideas.

Alitia (17:51):

That's fantastic. Adam, what other concerns were addressed or raised during the presentation this afternoon?

Adam Siegel (17:58):

I mean, I think circling back, I think the biggest concern was how are we going to get employees into these spaces? As Felice mentioned, the attendee was mentioning the low unemployment rates, but yet they weren't seeing that translate into the hospitality industry. So there's a major concern from the employers about how they can fix that. He kind of made a joke, whoever figures that out is going to be making millions of dollars. Right? And so that certainly seemed to be the resounding issue amongst the group is how are we going to get people back? They were asking, maybe should we start looking at hiring minors or what are people thinking about that and the legal concerns that come with hiring minor. So again, it seems to be a consistent pattern, or concern about finding employees.

Alitia (18:57):

Understood. Felice, how is Jackson Lewis providing assistance to organizations and employers in the hospitality industry, given everything that you both have discussed today?

Felice Gomen (19:08):

We are working very hard to be thought leaders in this area to provide real live ideas that are practical, that are not just academic and the way we're doing this is we are developing strong teams of attorneys who speak to one another and share ideas so that we can all benefit internally from our best thinking so that we can share it with all of our clients.

Alitia (19:38):

That's fantastic. Thank you so much, both of you for being here today.

Adam Siegel (19:42):

Thank you for having us.

Alitia (19:45):

I hope you enjoy the rest of the conference.

Felice Gomen (19:46):

Thank you.

Adam Siegel (19:46):

Thank you.

Alitia (19:50):

Thank you for joining us on We Get Work. Please tune in to 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 on apple podcasts, Google podcasts, Lisbon, Pandora, SoundCloud, Spotify, Stitcher, and YouTube.

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