

Podcast

# Live from CCC2023 Ep. 5: Talk Around the CCC Roundtable – Issues Facing Hospitality and Retail Companies and Immigration in the International Context

By Laura A. Pierson-Scheinberg, Kellie M. Thomas, John L. Sander, Otieno B. Ombok, Minnie Fu, Linda R. Carlozzi, Douglas J. Klein & Amanda A. Simpson

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## Meet the Authors



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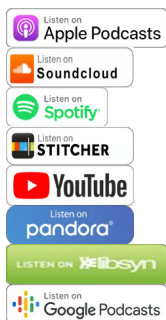


## Details

May 1, 2023

Welcome and thank you for joining us for this special edition of We Get Work, live from Jackson Lewis' Corporate Counsel Conference, CCC2023, at the Waldorf Astoria Monarch Beach resort in Orange County, California. What follows are high level conversations on conference programs and why they were important topics to present now.

Jackson Lewis P.C. · Live from CCC2023 Ep. 5: Talk Around the CCC Roundtable – Issues Facing Hospitality and Retail Companies and Immigration in the International Context



## Transcript

Alitia Faccone:

Welcome and thank you for joining us for this special edition of We Get Work, live from Jackson Lewis's Corporate Council Conference, CCC 2023 at the Waldorf Astoria Monarch Beach Resort in Orange County, California. What follows are high level conversations on conference programs and why they were important topics to present now. In this episode, our Jackson Lewis lawyers share what employers are thinking as they discuss the conversations around the CCC Roundtable. Amanda Simpson, Linda Carlozzi and Doug Klein shared the talk around the hospitality round table, dealing with laws that are not so hospitable for employers. Laura Pierson-Scheinberg and Kellie Thomas talked through the issues at the retail round table, cresting the tidal wave of challenges toward a future of smooth selling. And Minnie Fu, Otieno Ombok and John Sander explain cross-border remote work in the post COVID era and what was discussed at the international and immigration round table.

Alitia Faccone:

Good afternoon, and thank you for joining us for Jackson Lewis's We Get Work Podcast live from CCC 2023. I'm here with Amanda Simpson, Linda Carlozzi, and Doug Klein. Good afternoon everyone. Amanda going to start with you. Can you tell us a little bit about yourself, where you're from and your practice at Jackson Lewis?

Amanda Simpson:

Sure, so my name's Amanda Simpson. I am a principal in the Orlando office in Florida. I also have the great pleasure of being the litigation manager as well as serving as the co-leader of the Hospitality Restaurant Group. As you can imagine with that role, I'm also a very active member in the Class and Collective Action Practice Group and the Wage and Hour Practice Group.



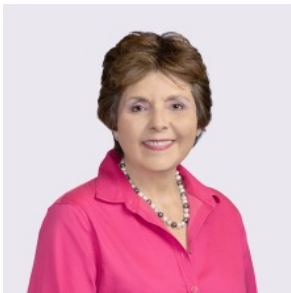
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Alitia Faccone:

Thank you. Linda?

Linda Carlozzi:

Good afternoon. I'm Linda Carlozzi. I'm a principal in the New York City office. I'm also the co-leader of the Fitness Group, which is part of the hospitality practice and my practice is primarily focused on labor relations.

Alitia Faccone:

Doug?

Doug Klein:

Good afternoon. My name is Douglas Klein. I'm the office managing principal of Jackson Lewis in New York City. I've been with Jackson Lewis since 2013. My practice is a mix between litigation defense with a focus on class and collective action defense, but as well as single plaintiff cases and advice and counsel, and I have a particular focus in the hospitality space in New York.

Alitia Faccone:

Thank you. Amanda, the title of your presentation this afternoon for the hospitality round table was Dealing With Laws That Are Not So Hospitable To Employers. Can you provide our listeners with a brief summary of what you covered in your program and why it was important to present this topic in 2023 at CCC?

Amanda Simpson:

Absolutely. So from an industry group perspective, we have been keeping an eye on trends not only on a federal level, but we're seeing a wave of state and local regulations that industry employers after the last three years and having to recover from the effects of COVID are now having to face. And we really reached out to the clients and asked what keeps you up at night? And so we covered things like organizing and how it looks and feels and walks a little bit differently these days. We talked about hot button wage and hour issues that are very nuanced and specific to the industry. We also talked about how given the type of employee that is most attracted to the industry, you also have very unique claims when it comes to what we all consider normal Title XII claims, the sexual harassment claims are very different within this industry. And so the topics we talked about covered nuances that our clients see every day and wanted to hear about what can they do from a preventative standpoint to avoid having to talk to us outside of this setting?

Alitia Faccone:

Thanks, Amanda. Doug, given some of the challenges and the issues that Amanda just listed for us, what really resonated with our attendees during your presentation?

Doug Klein:

I was very taken by the information sharing, for example, coming out of experience in litigation and how the attendees talked about efforts to change the way that they conduct training, for example, and the types of issues that they really focus on having employees talk about openly with them, along the lines of Amanda was alluding to in a different way in this industry. The hospitality industry inherently, there there's more collegiality often among people, there's often settings where alcohol is being served. We talked about how in an environment where tips are part of the culture, that certain hospitality employees are less likely to come forward with a sexual harassment complaint because it's a high valued customer and I don't want to make trouble, that kind of concept.

And really working with employees to understand that the company still stands by you and those things aren't accepted and that it takes a lot of work often in direct conversations with employees to have them appreciate that and buy into the belief that we really do support our people. Sometimes those lessons fortunately, aren't learned until after there's been litigation or a government investigation. So certainly unique in that industry, but there was a lot of information sharing and lessons learned from clients in this session, which was very informative.

Alitia Faccone:

Thank you. Linda, what do you believe are some key takeaways employers should keep in mind when addressing these types of issues in their organizations?

Linda Carlozzi:

So I think some of the key takeaways were really finding a way that employees expressed their voice and it was about employee engagement. All of our participants really strive to be employers of choice and it is not only identifying what their social values are, but how do they live and breathe those social values and how do they communicate that to their employees? Employees are very attuned to many different social issues and they want to know that their employer is involved and does care. And in addition, I think that our participants took away a feeling that supervisory training the folks that are interacting with the employees one-on-one because there's different levels of management and supervisory structure depending on whether it's a small company or a large company. Supervisory training is incredibly important in making sure that employees feel valued and feel that their opinion matters and their feedback matters.

Alitia Faccone:

Linda, Amanda, Doug, thank you for joining us behind the We Get Work Podcast mic this afternoon and we hope you enjoy the rest of our CCC conference.

Linda Carlozzi:

Thank you.

Doug Klein:

Thank you.

Amanda Simpson:

Thank you.

Alitia Faccone:

I'm here with Kellie Thomas and Laura Pierson-Scheinberg. Good afternoon ladies. Can you tell us each a little bit about yourself, where you're from and your practice at Jackson Lewis?

Kellie Thomas:

Sure thing. Hi there. This is Kellie. I am a principal in our benefits group out of the Baltimore office. I've been with Jackson Lewis for about seven years, and I'm also a member of the retail industry group.

Laura Pierson-Scheinberg:

Hi there. I'm Laura Pierson-Scheinberg and I am out of the San Francisco office and occasionally out of the Baltimore office. I practice labor law and I am also head of our retail industry group.

Alitia Faccone:

Thank you. So ladies, you are the host of our retail round table today, the title of which was Cresting the Tidal Wave of Challenges Toward a Future of Smooth Selling. Kellie, can you provide our listeners with a brief summary of what you covered in your program this afternoon and why it was important to talk about this topic at CCC?

Kellie Thomas:

Sure thing. So we really welcomed this opportunity to bring together our retail clients in a round table setting where we could discuss anything and everything that's of interest to retail employers right now. Some of the topics included multi-state issues. We talked about DEI and how that manifests in a retail space. And a big topic that we spent some time on was the new sort of workforce that we're seeing with Gen Z who disproportionately are working for these retail employers and sort of challenges and opportunities that that can bring.

Alitia Faccone:

Thank you. Laura, what were some of the issues that resonated with the participants of the round table this afternoon and what did people really want to know and talk about?

Laura Pierson-Scheinberg:

It was a really engaged group. The room was full, so that's always exciting and they were sharing best practices. It really ranged the gamut. A lot of it was about engaging Gen Z workforce. We talked about that this morning in our plenary session, talking about union organizing and the social movement really about employee engagement. And we spent a lot of time talking about having a values driven workforce and what that means and how do you engage and coach and reach younger employees. By 2027, the workforce will be made up of predominantly Gen Z and Millennial workers, 70% of the workforce will. So we have to really think as practitioners, how do we engage the employees because they want something different from work than has historically been the case.

And so we have to adapt to them because we want our employees to be engaged. And I think it's been a really interesting conversation.

Kellie Thomas:

And we learn some of the social purpose platforms that employers are using, some of the initiatives that they're doing to kind of respond to concerns of that generation and just ways to further incentivize people and create the new sort of workforce that we're seeing.

Alitia Faccone:

Laura, were there other concerns or other questions that were raised during your presentation?

Laura Pierson-Scheinberg:

Yeah, absolutely. So we were talking about the use of technology, the use of apps, et cetera, and how you can avoid a working off the clock essentially. They want employees to feel engaged and have access. And so some tools that they were sharing among the room were things like geo tracking, basically the app or the scheduling function wouldn't work unless you're within a certain area of the store. They talked about use of kiosks and some other things. What else did you think, Kellie, that I'm forgetting?

Kellie Thomas:

Yeah, no, well, I thought something that was really interesting about that was we were sort of talking about the technology tools in the context of a Gen Z workforce and how there's a movement toward that. But the flip side is also true, which then you can have issues from an accessibility perspective, not only for people that aren't as technology native as sort of younger generations are, and also just financially you don't always have access to those tools. So I think they raise a lot of interesting issues that kind of cross different areas.

Laura Pierson-Scheinberg:

Some of the ideas that they had was just putting some guardrails around those rules. So for example, on scheduling swapping, that's very common in the retail space. So the schedule would have to be posted for at least 12 hours before it could be picked up so that people who have more access to wifi or devices on a basis where they can access at work, but access it off of work that there wouldn't be a disparate impact on folks. So I just thought it was super fascinating because it wasn't something that would necessarily come right to my mind. And so that's what I love about my job. It's the practice of law. I learn just as much from my clients as I hope I impart the knowledge onto them. So that's why I love my job so much. I get to do this for a living.

Kellie Thomas:

Absolutely.

Alitia Faccone:

So for the people that weren't part of the conversation today, what were some of the key takeaways employers should know when addressing these issues in their own organizations?

Laura Pierson-Scheinberg:

So I think the legislation, I think that the fact that there's sort of two trending legislations right now in spaces, they actually said it felt like the wave of the law legislation has kind of run its course and that the sort of in vogue legislation is the scheduling ordinances. LA has one that's coming out in two weeks. So we had talked about that, that's then sprung board into all of the ordinances all over the country, which our firm does do a good job of tracking. And so we were talking about those resources. And then the other ordinances we were talking about was pay transparency ordinances. California has it, New York has it, Colorado has it, and the trend that's going on there.

Kellie Thomas:

Yeah. And there was a discussion about whether employers in the retail space are sort of trying to put uniform policies into place to comply if possible with them all at once, or if they're handling it more on a jurisdiction by jurisdiction basis and some best practices there. And to me, the overall lesson was really, it requires a lot of, they have to be nimble right now. These things are moving fast, they're changing quickly. And shameless plug for Jackson Lewis, having advisors and trackers to help you do it is key.

Alitia Faccone:

Well, that was going to be my next question. What are you and your Jackson Lewis colleagues doing to provide assistance to employers on these areas?

Laura Pierson-Scheinberg:

So I think just having an industry group is really a big part of that, to have these spaces where our clients can come together and share best practices. I mean, that was the coolest part. It was the easiest part of my day. I just had to sit there as they engage in this exciting dialogue and it was really cool to just hear the different perspectives and "Oh yes, I'm doing that." So I think providing them a space and of course being that resource, we track it, we know the retailers. As head of the group, I'm always reading up on it, keeping fresh on all those ideas. And so we have newsletters we send out, we do regular articles and podcasts. So we just want to talk about the trends and make sure our clients are being progressive and thinking about things.

Alitia Faccone:

Kellie, Laura, thank you so much for joining us behind the We Get Work podcast mic this afternoon. And we hope you enjoy the rest of our CCC 2023 conference.

Laura Pierson-Scheinberg:

Thank you so much.

Kellie Thomas:

Thank you.

Alitia Faccone:

I'm here with Marjorie Adams, Otieno Ombok, John Sanders and Minnie Fu. Good afternoon everyone. Can you tell us a little bit about yourself, where you're from and where and how you practice law? Marjorie, I'm going to start with you.

Marjorie Adams:

Certainly. Hi, it's wonderful to be here. I am currently at Faring Pharmaceuticals. I'm the Head of Employment and Litigation. I basically do everything employment and litigation there. I've been doing this for about 25 years at a number of life science and other companies and other industries.

Alitia Faccone:

Thank you. Otieno?

Otieno Ombok:

Yes. So my name's Otieno Ombok. I'm immigration principal with Jackson Lewis. I'm based out of

the White Plains office, and I'm the co-chair of the Immigration Practice Group.

Alitia Faccone:

Thank you. John?

John Sander:

I'm John Sander and I'm the co-leader of the International Employment Practices Group at Jackson Lewis. And I work out of the New Jersey and New York offices.

Alitia Faccone:

And Minnie?

Minnie Fu:

I'm Minnie Fu. I'm a principal at the Washington, DC office and I'm an immigration attorney and currently co-chair our international employment.

Alitia Faccone:

Thank you, John. The title of your presentation today was the International and Immigration Roundtable, Cross Border Remote in the post COVID Era. Can you tell us a little bit about your presentation and why you came together to present this topic at CCC?

John Sander:

Sure. You know what we have found, and this began during the COVID era, but it's continuing post COVID, which is this enormous desire for advice on cross-border remote work. It's just becoming a very important issue for so many of our clients. Employees want to travel cross border. Employers want to know to what extent they can accommodate them. And certainly for particularly younger employees, it can be a matter of recruitment and retention to be able to satisfy that need. And so we did it in the form of a round table because the questions, although there are many legal questions, they are very practical also. And so we wanted to bring together in-house and former in-house people like myself to talk about how it really works in the real world. And so we had a very good session I think today, and I think we all got a lot of new ideas.

Alitia Faccone:

Thank you. Minnie, what were some of the important issues that resonated with our audience, or what are some of the challenges that they discussed facing in their workplace?

Minnie Fu:

We discussed cross border remote work, and the very first thing is we obviously talk about whether a person can work in a foreign country legally. So then we discuss the digital nomad and or people who go back to their home country to work or people who just want to go to a third country to work and also take a vacation. So I think what attendees are very interested is learning what are the implications for employers, for companies? And once they have that knowledge, what do they do with this? Do companies need to have a policy? What kind of policy, the duration, what are the considerations? And we received a lot of the interaction, people asked a lot of questions, and so no, we're able to really address that.

Alitia Faccone:

Marjorie, were there other concerns or questions that were raised or coming from the in-house perspective? What were some of the comments that were shared during your round table?

Marjorie Adams:

I felt that most people were looking for a practical way to deal with this situation. If they have guidelines in place, were they the guidelines that most others had or whether to adopt a policy? That's been my own personal experience at a number of companies where we have a policy that's changed a lot during COVID, but in the end, what most of my companies have done that I've worked with is they basically come up with a way to assess the multitude of risks that are there. Immigration

is a big, big concern. However, whether people will have benefits, tax implications of being in a certain jurisdiction and tax implications aren't just for the individual, but also for the company. And whether by virtue of allowing somebody to work in another jurisdiction for a matter of time, whether that's going to require the company to actually set up a legal entity there.

So we talked a lot about practical approaches to that, and one of the things, and I think people focused on was how long, if someone's going to a different jurisdiction, at what point do you use a multitude of resources to do an assessment? And my own experience has been over 30 days is when we usually do that assessment in-house and we go to the employee and ask them to either change their plans to make it less time in the jurisdiction or to think about some of the possibilities, the ramifications from choosing to go to another jurisdiction.

Alitia Faccone:

Thank you. Otieno, given everything that John and Minnie and Marjorie just discussed, what are the key takeaways that employers should keep in mind when addressing these issues at their own organizations?

Otieno Ombok:

Yeah, I think one of the key takeaways that came out of the session was that employers need to have guidelines and internal policies for addressing these issues. And that when an employee comes forth and says that, for instance, they want to travel to a foreign country and work remotely, whether they're coming into the US or going outside the US, it's important for employers to determine what are the ramifications? What are the consequences of the employee working remotely in that country? Both from an immigration perspective, does the employee have a work permit or authorized to work in that country? If so, well and good. If not, what steps and what preparation should the employer take to make sure that the employee does not run afoul of basically violating the rules, immigration rules, rules in that country?

And there are also other takeaways from a tax perspective looking at what are the tax consequences? As Marjorie said, if the company does not have a presence in that country, does the employee working remotely result in permanent establishment for tax implications, from a benefits perspective and compliance with local employment and labor laws? Those are some of the important takeaways that came out of the session.

Alitia Faccone:

Sounds like there's an awful lot to think about. So John, how are you and your Jackson Lewis colleagues providing assistance to organizations that are facing these issues?

John Sander:

Well, one of the real advantages we have is that in addition to the depth of our employment law and immigration practices, we also founded an international alliance of firms called L&E Global, and we're in about 32 different countries, and we have some of the top employment lawyers around the world teaming up with us. So today at the round table, for example, we were able to call on the thoughts from great lawyers in Mexico, India, China, France, and the Netherlands. And they'd not only answer specific legal questions that are relevant to their countries, but they'd bring a perspective that those of us who spend all our time in the United States don't have. And one specific tool that we've created that has been very useful to people is a set of FAQs on cross border remote work, which deals with the key issues in about 30 countries, and that's available on the [leglobal.law](http://leglobal.law) website.

Alitia Faccone:

Thank you. Marjorie, Otieno, John, and Minnie, thank you so much for stepping up to the mic today, and we hope you enjoy the rest of the conference.

Minnie Fu:

Thank you.

Otieno Ombok:

Thank you.

Marjorie Adams:

Thank you.

John Sander:

Thank you.

Alitia Faccone:

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