

Podcast

Live from CCC2023 Ep. 1: Where Should My Employees Work and How Accommodating Does Our Organization Need to Be?

By Tasos C. Paindiris, Felice B. Ekelman, Kimya S.P. Johnson & David S. Mohl

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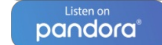


Details

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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. 1: Where Should My Employees Work and How Accommodating Does Our Organization Need to Be?



Transcript

Alitia Faccone:

Welcome and thank you for joining us for this special edition of We Get Work, live from Jackson Lewis's Corporate Counsel 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, Jackson Lewis lawyers Felice Ekelman, Kimya Johnson, and Tasos Paindiris discuss Preparing for Culture Shifts: How to Thrive Amid the Varied Challenges in the Hybrid Workplace.

They are joined by special guest panelist, Heidi Yurkiw, Senior Vice President, Deputy General Counsel of Bath & Body Works. The episode also includes JL lawyers David Mohl and Sheri Giger, discussing Disability Leave and Accommodations Deep Dive: Applications in Action, one of many topics critical in every workplace whether in the office, hybrid or remote.

Good afternoon, and thank you for joining us for Jackson Lewis's We Get Work

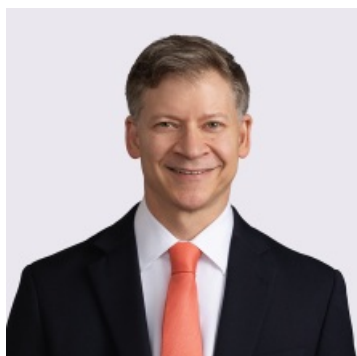
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podcast live from CCC 2023. I'm here with Felice Ekelman, Tasos Paindiris, Kimya Johnson of Jackson Lewis, and Heidi Yurkiw, our special guest from Bath & Body Works. Good afternoon everyone. Can you tell us a little bit about yourself, where you're from and your practice. I'll start with you Felice.

Felice Ekelman:

Hi, I'm Felice Ekelman. I practice in New York City and I have a varied practice, but for the past three years I have been thinking about hybrid work. I co-authored a book called Thrive With a Hybrid Workplace: Step-by-Step Guidance from the Experts.

Alitia Faccone:

Tasos.

Tasos Paindiris:

Well, I've been with Jackson Lewis practicing employment law for almost 30 years. I'm currently in the Orlando office. My practice has been a mix of litigation and advising clients on compliance, but now in my role as co-leader of the National Advice and Counsel Group, I'm focusing more on working with clients on their challenges with multi-state compliance issues and developing policies for their companies.

Alitia Faccone:

Kimya.

Kimya Johnson:

I've been practicing employment law for about 20 years now and sit in Philadelphia, but a lot of my time is also spent and has been spent serving as a DEI, diversity, equity and inclusion practitioner, and I currently serve as Jackson Lewis's Chief Diversity, Equity and Inclusion Officer.

Alitia Faccone:

Heidi, thank you again for joining us today.

Heidi Yurkiw:

Hi, I'm Heidi Yurkiw. I'm Senior Vice President and Deputy General Counsel at Bath & Body Works. We are headquartered in Columbus, Ohio, and I pretty much advise on all matters that touch on our employees.

Alitia Faccone:

Thank you very much. The title of your presentation today was Preparing for Culture Shifts: How to Thrive Amid the Varied Challenges in the Hybrid Workplace. Felice, can you provide our listeners with a brief summary of what was covered in your presentation and why do you think it was important to present this topic at CCC this year?

Felice Ekelman:

This is a huge issue for employers across lots of industries and talking to clients on a regular basis about pressures to be more flexible in the workplace resulted in us wanting to present this at CCC23. We started our conversation by talking about policy development and one of the things we emphasized was the need for flexibility as well as the need to ensure that the policy makes sense for the organization. And that requires having different voices participate in the policy development and doing some research before decisions are made. And when I say different voices, we talked about having folks not just from human resources and perhaps a legal review, but making sure that employees in IT, in operations, in manufacturing, as well as in communications, participate so that the employer's decision-making is based on a robust analysis of information about the workforce.

The other thing we spent a lot of time on is discussing why employers need to recalibrate the way in which they address accommodation request. We spent a good deal of time talking about how remote work from home for several months or years, depending on the organization, has changed the analysis and approach for these requests and how important it is for organizations to remember that the world has changed, their experience has changed, and so their decision-making has to reflect these new challenges. One of the things organizations should think about is identifying a hybrid or remote chief employee who would be the center point for policy issues, policy analyses and evaluation of accommodation requests. That will ensure consistency and also be mindful of legal obligations.

Alitia Faccone:

Thank you, Felice. Tasos, can you tell us what some of the issues were that resonated with our audience today? And what do they really want to know about this topic?

Tasos Paindiris:

Well, employers are facing a lot of challenges from a compliance perspective and particularly when it comes to accommodating employees who can't meet the requirements, for example, of a policy that requires them to be in the workplace every day or a certain number of days. So employers want to know how they could take proactive steps to manage some of those issues because we're at a point where the roller coaster of COVID waves has passed and restrictions have passed, and so employers are readdressing what their long-term approach to hybrid work will be, and there are a lot of different variables in those approaches. So attendees were interested in hearing some of the pros and cons of the different approaches and hearing examples of a lot of the issues that our clients are facing, including Bath & Body Works where Heidi talked about.

Alitia Faccone:

So, Heidi, turning to you, can you tell us some of the other concerns that might have been expressed by our attendees? Or can you share with us what you're doing in your organization to address some of the issues that Felice and Tasos raised?

Heidi Yurkiw:

I think my organization is probably typical of a lot of different organizations that have workforces that some are technology-type workers and they can do their work

through a computer and it gives them more flexibility. But we also have retail workers that work in our stores that don't have as much flexibility and our distribution center workers that work in our warehouses. So when we first came up with the policy, we recognized that it probably, at least at first, was going to be focused largely on what we could do with respect to our computer-based workers, our headquarter workers. And we thought in terms of what does the role require and does the role enable the person to be fully remote, not in Columbus, Ohio, at all, or hybrid?

But pretty much no office worker was required to be in five days a week. And then we also have stretched and we're starting to think of what ways can we open up some flexibility for workers that typically don't have that type of flexibility. And that will come in terms of maybe different types of structured work weeks. Some employers are talking about four tens, technology that would enable non-exempt workers to clock in from home to be able to do some little things from home to free them up. So I think this is just an evolving issue that we will be talking about for years to come.

Alitia Faccone:

Thank you. So Kimya, one of the things that we learned this afternoon was, we're talking about this issue today, but it's morphed and changed in the few years since it's become more prevalent and we know that things are going to continue to change in the future. What are some of the other issues employers need to keep in mind as they think through some of the issues that you all spoke about in your presentation?

Kimya Johnson:

Absolutely. Frankly, before the pandemic workers were talking a lot and frankly demanding fluidity and more flexibility in how, where and when they worked. And frankly, what we have witnessed over the last several years is a willingness of employers to not only see that, but to meet the demands that they were already beginning to hear pre-COVID. And so what we talked about in this session was being mindful that, one, when we're talking about flexible work, it's not an issue that's going anywhere. And so we should be more equipped to be able to understand the realities of what particularly diverse identifying groups, so we're talking about women, communities of color, people who are caregivers, people with disabilities and so on and so forth, that we need to be more equipped to be able to not only hear, but to be able to provide the type of work arrangements that will allow folks to be able to engage and to be successful.

Some of the things that we talked about is recognizing that this is a complex issue when we're talking about flexible work, and it's not only a legal or compliance issue, it's not only a human resource issue, but frankly it's an organizational imperative that may or may not align or support what we claim are the values that are inherent in our company. It may or may not align with the DEI diversity, equity and inclusion imperatives that we claim that we want to promote.

So really thinking more holistically and broadly about how we're able to meet the demands of different, diverse-identifying but different employee groups as a whole, to recognize that there are real wealth and income disparities that could be at play that may prevent or hinder the ability of some of our employees to be able to work

fully in person or physically in an office that we weren't experiencing before inflation and some of the economic realities that we're facing as well. So it was a pleasure to be able to begin to continue to have conversations about how this issue is evolving, how it will continue to evolve, and the fact that it's not going anywhere.

Alitia Faccone:

Thank you for sharing some initial thoughts about this topic in the brief time we have together today. But if you could give employers one piece of advice today, whether they were in the audience or listening to this podcast, what would it be to help them prepare for the challenges that they're going to continue to face?

Felice Ekelman:

I would urge employers to equip their managers with the tools they need to understand how to evaluate employees who may not be working with them on a day-to-day basis in the same location. Back in the day, an employer's leader might look down a hall and see folks busily typing away at their computers and say, "Okay, everyone is working." That does not work anymore. Managers have to learn how to use new tools to understand how to communicate when they're not all together all the time, how to create institutional glue that keeps people together, how to train employees when, again, they're not all in one place at the same time, and how to make work in the office meaningful.

I don't think that long-term employees are going to be wooed back to an office with gimmicks. Employees need to come to an office because they know that opportunities for collaboration and supervision and development of skills will make working in an office meaningful, and managers have to learn how to make the most out of the days in the office, and managers have to learn how to communicate and how to supervise and evaluate staff that are working on a hybrid or remote basis. That would be my advice to employers.

Alitia Faccone:

Tasos.

Tasos Paindiris:

Yeah, look, employers are facing new demands when it comes to this issue. Hybrid policies are part of the competitive landscape among employers now, and they're being used as a recruitment and retention tool. In fact, people are asking at job interviews to the potential employer, "What is your hybrid work policy?" And so you need to be prepared to answer that question in a way that's going to attract that candidate.

I think employers used to look more at, "What are we required to do? What are my legal obligations? How can I establish that the essential functions of this position require this person to be in the workplace?" And we've evolved away from that and instead are looking at, "Well, how can we be flexible in a way that still addresses our legal compliance needs and in a way that doesn't create more risk for us than we're willing to tolerate, but at the same time accepting the fact that flexibility is what could help drive that recruitment and retention."

Alitia Faccone:

Heidi.

Heidi Yurkiw:

I would say most employers have goals relating to increasing diversity in their ranks, and the remote working has opened up the world to them now. Previously, if you were an employer in a particular area of the country, let's say, that was predominantly Caucasian, did not have a really robust regional diverse group of people to hire from, if you post more of your roles as remote, you are opening up a whole different pool of candidates. Not only that, but most individuals with disabilities would probably benefit from working remotely, and so we can increase the diversity in our workforces by opening up this flexibility in using this tool.

Alitia Faccone:

Kimya.

Kimya Johnson:

I would add that this is an opportunity for employers to actually listen to what their current and future workforce is telling them they need in order to come and work and to engage when they are working. As Heidi was highlighting, this is a real opportunity when we're talking about flexible work arrangements to perhaps increase diversity within our organizations to actually meet the intended goals and the stated values that we pretend when we're talking about the ability to be able to attract diverse identifying folks into our organizations. That remote or hybrid work options may actually provide the opportunity for us to do that, but there's also a retention reality as well.

The fact is that there are reasons, well demonstrated, articulated, and now increasingly research reasons why people of color, why people with disabilities, why women, why caregivers, why folks who are LGBTQ+ or non-binary and why younger workers are increasingly not asking but demanding flexibility in how and where they work. And employers who are best positioned to be able to not only attract, but retain these workers, should be prepared to answer the demands that they're being presented with.

Alitia Faccone:

Thank you all so much for being here today and I have a feeling that we're going to be talking about this topic at CCC 2024. I'm here with David Mohl and Sheri Giger. Good afternoon. Can you tell us a little bit about each of you, where you're from, and your practice at Jackson Lewis?

David Mohl:

Well, hi. Thank you very much. My name is David Mohl. I am based in the Atlanta office. I focus my practice on disability leave and health management.

Sheri Giger:

My name is Sheri Giger. I am in the Pittsburgh office of Jackson Lewis, and I also

focus my practice on disability leave and health management, and am one of the practice groups co-leaders.

Felice Ekelman:

Thank you folks. Sheri, the title of your presentation was Disability Leave and Accommodations Deep Dive: Applications in Action. Can you provide our listeners with a brief summary of what was covered during your program, and why it was important to present this topic at CCC 2023?

Sheri Giger:

We decided to identify key hot topics that are occurring right now across industries and workplaces. So we focused on the topics of remote work and the unique challenges that presents in this day and age, commuting, medical exams and inquiries, mental health challenges, which is a very hot topic right now, pregnancy with new law coming up, and military leave.

Alitia Faccone:

Thank you, Sheri. David, given the list of topics that Sheri just provided, what were some of the important concerns and issues that resonated with our attendees during your presentation?

David Mohl:

Well, I mean, not surprisingly, one topic. I mean, they all really resonated, but one that particularly was of interest was work from home accommodations. We could have spent a whole hour just talking about that with all of the challenges that employers are facing since the pandemic and everything that's come with that, with getting people back to work. So that really was one of these topics that we discussed where there was a lot of interest, a lot of interaction, and some really good questions.

Alitia Faccone:

Sheri, what do you believe to be some of the key takeaways employers should keep in mind when addressing these issues in their organizations?

Sheri Giger:

One thing that's really important to realize is that all of these topics are continually evolving, and where we are today may be very different in six months, in one year, and that flexibility is needed to recognize that evolution and to adapt processes and procedures to it. Over all of the topics is the importance of an individualized assessment, particularly when going through tricky accommodation issues, and of course, looking forward to the new Pregnant Workers Fairness Act, which takes effect this summer.

Alitia Faccone:

David, how else are you and Sheri and your Jackson Lewis colleagues providing assistance to organizations on these issues?

David Mohl:

Well, the law in this area is very dynamic. I mean, there's a lot of issues from state and local legislation and ordinances and rules. So one thing that we've done is we've developed an online tool, the Jackson Lewis Leave and Accommodation Suite that has a lot of really helpful information, including up-to-date, 50 state local law summaries in all of these leave and accommodation areas. Information on that can be found on [jacksonlewis.com](https://www.jacksonlewis.com).

Alitia Faccone:

Thank you both for joining us this afternoon behind the podcast mic, and enjoy the rest of CCC.

Sheri Giger:

Thank you.

David Mohl:

Thank you.

Alitia Faccone:

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