

Live from CCC2023 Ep. 4: How the Economy and the State of California Will Affect Employers in 2023

By Michael Jakowsky, A. Scott Ruygrok, Cepideh Roufougar, Suzanne G. Odom & Alec Nealon

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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. 4: How the Economy and the State of California Will Effect Employers in 2023



Transcript

Alitia Faccone:

Welcome and thank you for joining us for this special edition of We Get Work, live from Jackson Lewis' 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, we explore how the current economy, among other external factors, create evolving challenges for employers. Jackson Lewis' Mike Jakowsky is joined by special guest panelist, Lauren Parra, senior employment council of Interpublic Group.

And they address RIF WARN in today's economic climate, how to decrease headcount while avoiding an increase in litigation risk. JL Lawyers Sue Odom and Alec Nealon take a different view in riding the changing tides, leveraging employee benefits in uncertain political and economic times, and in the always turbulent state of California, Ceideh Roufougar and Scott Ruygrok discuss the

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lifecycle of a California employee as seen through the eyes of in-house counsel. Good afternoon, and thank you for joining us for Jackson Lewis' We Get Work podcast live from CCC 2023. I'm here with Lauren Parra of the Interpublic Group and Mike Jakowsky of Jackson Lewis. Can you both tell us a little bit about yourself, where you're from and your practice?

Lauren Parra:

Sure. So this is Lauren and I am previously of the New York City office of Jackson Lewis. Since then, I've moved on to the Interpublic group of companies and I still thankfully work very closely with many attorneys here at Jackson Lewis.

Alitia Faccone:

Thanks, Lauren. Mike.

Mike Jakowsky:

Mike Jakowsky, and I'm an attorney in our New York City office. I provide a variety of different services for clients, mostly advice to counsel, and one of the areas that I specialize in is reductions in force.

Alitia Faccone:

So the title of your presentation today was RIF WARN In Today's Economic Climate, How to Decrease Headcount While Avoiding an Increase in Litigation Risk. Can you provide our listeners with a brief summary of what was covered during your program and why was it important to present this topic at CCC 2023?

Mike Jakowsky:

So we presented, from beginning to end, the lifeline of a reduction in force or restructuring initiative. We reviewed with the attendees some different concepts to consider when you're planning a restructuring or reduction in force initiative, and then went into both the timeline as well as the granular concepts. We reviewed the Worker Adjustment, Retraining Notification Act, WARN Act. We reviewed the Older Workers' Benefit Protection Act and the Age Discrimination Employment Act.

As well as how different concepts related to those different laws such as remote workers, timing for reductions in force, and other considerations. I think given the current economic climate and what we're seeing out there, it's a very timely topic. Unfortunately, the current economic climate, no organization appears to be immune and no industry appears to be immune, and so while traditionally, these restructurings are set on timing or different geographical areas or industries, current economic climate seems to be trending to a more broader impact across all spectrums.

Alitia Faccone:

So Lauren, given the current trends Mike was just talking about, what were

some of the issues that resonated with our attendees during your presentation?

Lauren Parra:

So Mike already alluded to this, but the WARN Act, obviously any state nuances where I'm not just thinking about the federal. We know that we have these state laws that are applicable as well, and I really think in this post pandemic world with remote workers, that is a consideration that employers were not dealing with previously, and so we were able to provide those answers to the attendees about how we view remote workers and I think hopefully, what they took away is that it's better to be safe than sorry and viewing that single site of employment from different perspectives when looking at the remote workers to ensure that from all angles, we're covered in making sure that we're not triggering those laws.

Alitia Faccone:

Thank you. Mike, were there other concerns that were addressed or questions that were raised during the program today?

Mike Jakowsky:

I think the biggest concern that the attendees had was timing and management. We received a lot of questions on how to manage the process under very tight timeframes, or where the operators or decision makers had already done whatever it is that they're going to do and how do they backend risk minimize, and so a lot of the questions and a lot of the concerns seem to be focused on, okay, if we don't have six months to plan and we have a few days or it's done, what do we do, and so we addressed how to manage complex situations in very tight timeframes. We talked a little bit about some different concepts to help the attendees break down decisions that have already been made and how to risk analyze even under very tight timeframes.

Alitia Faccone:

So Lauren, given your current role and given your presentation today, what do you believe are some key takeaways that employers should keep in mind when having to address these issues in their organizations?

Lauren Parra:

I really think the biggest thing to take away from it is that planning is key, and as Mike just said, we don't always have the time to spend countless hours on reviewing these considerations, but I do think that for our attendees, we're in an interesting position. As in-house counsel, we are advising the business on the risk and so from our perspective, it's really important to get as much information as possible and take that role in pressure testing the considerations, the selection criteria, and just be prepared, and I always like to say assume that you'll be the one having to explain these decisions in the future and so making sure that you have the information that you need to in order to do that.

Alitia Faccone:

So Mike, how are you and other Jackson Lewis colleagues helping Lauren and other clients deal with these issues on a going forward basis?

Mike Jakowsky:

As best as we possibly can. We're really working with them in whatever capacity they need, whether it's from the outset, if we have time and we're planning with them the timeline, the guidelines, the guardrails that they're going to operate in, or it's already done, it's happening, help us, whether it's through disparate impact analysis, WARN analysis, preparations of template release agreements, and then molding and shaping the different concepts that have to be in a release agreement like program information, decision unit information, selection information, as well as all some of the backend pieces that you don't want to fall through the cracks like immigration items, union issues, anything related to state specific wage hour concerns. We're helping guide them to get them where they need to be in a very difficult, challenging position.

Alitia Faccone:

Mike, Lauren, thank you for joining us behind the mic today and we hope you enjoy the rest of the conference.

Lauren Parra:

Thank you.

Mike Jakowsky:

Thank you.

Alitia Faccone:

I'm here with Sue Odom and Alec Nealon. Good afternoon. Can you each tell us a little bit about yourself, where you're from, and your practice at Jackson Lewis?

Alec Nealon:

Yes. Hi, this is Alec. I am a partner based in the Houston office of Jackson Lewis. My practice revolves around benefits and executive compensation issues. So I deal with all matter of retirement plan issues, some health and welfare issues as well, and a big chunk of my work revolves around executives and their employment, their incentive arrangements, and their exit arrangements.

Sue Odom:

And I'm Sue Odom. I'm in our Greenville, South Carolina office, and my practice covers the full range of employee benefits from retirement plans, health and welfare plans, executive compensation arrangements, but I also work in the area of tax, and in today's remote and hybrid world, we are regularly fielding questions about wage withholding, unemployment tax implications of employees working on a remote or hybrid basis, and so that's the type of stuff I do on a day-to-day basis.

Alitia Faccone:

Thanks, Sue. The title of your presentation was Riding the Changing Tides: Leveraging Employee Benefits in Uncertain Political and Economic Times. 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 this year at CCC.

Sue Odom:

We covered some of the newest trends in employee benefits, some of the hottest topics, and I shared with the audience today that it used to be that benefits was your standard retirement plan, health insurance plan type boring questions, but today, we've got so much social activity inserted in employee benefit plans where we have, after the Dobbs decision where we had abortion, travel benefits discussed, we have health equity initiatives, which are basically diversity, equity, inclusion within the body of a health plan.

We focused a lot on some of the brand new stuff that we've got where the national emergency and the public health emergency are coming to close on May 11th and what that means to employers. They really do need to start taking action now to ensure that they know what those deadlines are going to be because May 11th will be here before we know it and they'll be on a wind down phase after that point in time, but it seemed like most of the interests related to the Federal Trade Commission's non-compete arrangements, which Alec was discussing in detail.

Alec Nealon:

That's right. There was definitely got the crowd going. It's a hot topic for a lot of companies. It's something that we at Jackson Lewis are actively monitoring and tracking, and there's a lot of interesting topics of discussion around it, not just about the substance of the rule and what it will do for employers, but also the impact on compensation arrangements and benefits and some tax implications, a lot of work for companies to work through.

Sue Odom:

And we also covered SECURE 2.0, that's the latest legislative change affecting retirement plans, covering really two of the key issues that are going to affect most of our employers with the mandatory participation of long-term part-time employees and some of those gotcha moments there, as well as the impact of some of the changes on our higher paid employees, those making 145,000 or more needing to start making catch up contributions on a Roth basis, which will be a fundamental shift and will require important communications with those leadership types in our various companies.

Alec Nealon:

And some of the audience were not too enthusiastic about that change. It left them with a sore.

Alitia Faccone:

Well, given the breadth of issues that you've just listed, what were some that really resonated with our attendees during your presentation? What did they really want and need to know?

Alec Nealon:

I think the non-competes was definitely something that resonated, again, because it's such a broad issue that's going to affect so many employers and their council and in many ways, both from a substantive perspective as well as from a compensation restructuring perspective. Another one, I guess I would say, well, the SECURE 2.0 raised some discussion as well.

Sue Odom:

That's right. We discussed a lot of different ways that employers could structure their potential non-compete arrangements looking forward. Alec shared some recommendations on what employers could be thinking about today by way of plan designs in the event that the law eventually has changed, which I think was one of the most important takeaways of the discussions, is that people left with that in their bags, so to speak.

The SECURE 2.0 changes were very important for us to get in front of them from a communication standpoint. Most of the people who attended our session are not the day-to-day administrators of their retirement plans or their employee benefit plans. So we were really focusing on helping them see the issues that are likely to wind up on their desk, and so disgruntled, highly paid employees is one that we were trying to hedge off.

Alec Nealon:

And that's a common thing for general counsel and just legal counsel at companies that they have to, they're often put in a tough spot between their senior executives and the law and what their outside counsel is telling them. So that is a common theme for them.

Alitia Faccone:

So what do you believe are some key takeaways employers should keep in mind when they go back to the workplaces and share with others in their workplace to address these issues in their organizations?

Sue Odom:

Benefits is such a tricky area because it's generally a landmine of potential issues and the most important thing that general counsel or in-house counsel could be doing is not just assuming someone else has it under control, really getting involved in understanding what they're doing by way of administration. As an example, question came up of a potential solution to a non-compete issue where, well, what if we just put these people on garden leave, for example, and instead of paying them for a non-compete, we just kept them on the payroll, let them keep getting benefits, let them keep getting retirement.

And just paid them as if they were employed, but they're not really working, and

so we talked about the potential benefit implications of that because even if that might work to solve one problem, you might create three problems from that as a result. So keeping those issues in front of council to make them aware that they shouldn't just assume they know what's going on in the other rooms and that they should always keep benefits as a question in their mind's eye to just make sure there's no benefit issues implicated by whatever they're trying to accomplish is very, very important takeaway.

And I say the same about tax. They say tax consequence for a reason, and that's because every single transaction you could possibly ever have always has a tax consequence. Maybe it's a good consequence, maybe it's a bad consequence, but you always have to think about tax anytime you structure any sort of deal, and that's what we would just say is benefit's part and parcel that same discussion. Think about the benefit implications of everything that you do because it may not always be what you think the answer is. Do you have anything to add, Alec?

Alec Nealon:

Yeah, no, that's right. I agree with that. I think another takeaway, a theme maybe that emerges is just the importance of being proactive in avoiding problems and maybe thinking ahead about potential problems further down the road, and how do you minimize those bumps? So that comes up with SECURE 2.0 and reaching out to your vendors ahead of time, it comes up with the end of the national emergency declaration and having to reach out to your vendors now rather than right before the deadline hits when everybody else is knocking at the vendor's door when they're completely overwhelmed.

It comes up with the non-competes and thinking ahead about how you should be restructuring your compensation arrangements or your employment arrangements. What should you be doing? What are the things you should be thinking about, and of course, in-house counsel already have their hands full, but unfortunately, this is one of those things where you still need to be proactive. You need to try to head these things off.

Sue Odom:

Right. And we began the session today, and perhaps how we'll conclude this podcast today, is posing the question of what's important to the company from a cultural perspective. What internal or external pressures do you feel in terms of structuring your benefit plans? We reflected on the history when things were just out of the box. You essentially got a health insurance plan and whatever was in there, that's what you offered, but that's not today's world.

I reflected on some of the labor sessions that we heard today from our colleagues at Jackson Lewis talking about how societal pressures will actually make their way into some of the labor negotiations where it may not be that they're negotiating overpay, they might be negotiating over some DEI initiative or ESG initiative, and that has made its way into the benefits space as well for companies that are open to those discussions and how you can actually proactively design your plans in a way that advances those initiatives if that's important to your culture, if that's important from a recruitment standpoint,

and that, again, is very different from the 1970s version of employee benefits.

Alitia Faccone:

Sue, Alec, thank you for joining us this afternoon and enjoy the rest of our CCC conference.

Alec Nealon:

Thank you.

Sue Odom:

Thank you.

Alitia Faccone:

I'm here with Cepideh Roufougar and Scott Ruygrok. Good afternoon, folks. Can you tell us a little bit about you, where you're from, and about your practice at Jackson Lewis?

Cepideh Roufougar:

Good afternoon. I'm Cepideh Roufougar. I'm a principal in our San Francisco office, and I am co-lead of our California Advice and Counsel Resource group. My practice is really focused on preventative practices with employers, helping ensure legal compliance and to minimize risk.

Alitia Faccone:

Scott?

Scott Ruygrok:

Hi, my name is Scott Ruygrok. I am a principal with the Orange County Office of Jackson Lewis. I'm a California attorney, but I also am a member of our National Advice and Counsel team assisting multi-state employers with multi-state policies, multi-state agreements, and multi-state guidance for trying to find practical solutions when dealing with a multitude of varying laws across multiple jurisdiction.

Alitia Faccone:

The title of your presentation today was The Life Cycle of a California Employee As Seen Through the Eyes of In-House Counsel. Can you provide our listeners with a brief summary of what was covered in your program and why it was important to present this topic at CCC this year?

Cepideh Roufougar:

So I think the question really should be what was not covered in our program today. We really wanted to take a fun twist on the usual panel discussion and had a bunch of scenarios, simulations that we went through with our esteemed guest speaker, Amy Durgan from SoFi, and we covered everything from pay transparency, wage and hour issues, producing payroll records, disability leave

management, and how California can be a little bit different than other states in those spaces and just some of the issues and compliance concerns to really be on the lookout for.

Alitia Faccone:

Thank you. Scott, what do you think are some of the important issues that resonated with our attendees during your presentation?

Scott Ruygrok:

I think one of the first ones was understanding California's pay transparency requirements that are relatively new, understanding that salary ranges need to be posted and job postings as well as provided to current employees, and understanding what is that salary arrange and how do we decide what's going to be included in that. Another one is regular rate of pay, which was also exciting, but goes into the mathematical calculations of how do you pay paid sick leave.

How do you pay overtime and meal and rest period violations. As Cepideh mentioned, personnel file production was another one, and I think that was particularly resonated with people because we're seeing so many of these request letters coming in from external counsel, which are essentially precursors to litigation and sometimes they ask for a multitude of documents and that go above and beyond what's required by law, and so arming employers to understand what they have to produce and what they don't have to produce.

Alitia Faccone:

Cep, what do you believe employers really want to know about these issues and how are you and Scott and our Jackson Lewis colleagues providing assistance to organizations?

Cepideh Roufougar:

Yeah. So I think employers need to know both the details of the law and practically what it means for their organizations, and in terms of that practicality, really figuring out where their organization wants to be on certain areas, and for example, in the pay transparency space, we've got Jackson Lewis lawyers who are really helping with employers developing compensation plans and structures and auditing to make sure that they don't have any pay equity issues that are arising, and the regular rate space, because that is such a high litigation space.

Working with the payroll departments to ensure that calculations are being performed correctly, that if they have things like a flat rate bonus where California treats it differently than federal law, we have captured that and we are paying all the things that Scott mentioned that need to be paid at the regular rate correctly. Our team of statisticians can really help employers with identifying where they may have liabilities and how much those liabilities could be in the event that they do get any sort of class action claims, or as we're looking to resolve issues when we self-correct internally.

Alitia Faccone:

Well, thank you both, Scott, Cepideh for joining us behind the We Get Work Podcast this afternoon, and we hope you enjoy the rest of the conference.

Cepideh Roufougar:

Thank you so much.

Scott Ruygrok:

Thank you very much.

Alitia Faccone:

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