

Podcast

The Year Ahead 2024: Higher Education

By Monica H. Khetarpal & Susan D. Friedfel

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Transcript

Alitia Faccone:

Welcome to We get work™ and The Year Ahead 2024 podcast series. Covering workplace issues from both subject matter and industry perspectives, the 19 episodes in our series provide both big picture trends and detailed tactics that can help employers achieve their workplace ideal, while remaining real about regulations, compliance challenges, and more in 2024. Jackson Lewis invites you and others at your organization to experience the report's legislative, regulatory, and litigation insights in full at our website, JacksonLewis.com, or listen to the podcast series on whichever platform you turn to for compelling content.

Monica Khetarpal:

Happy New Year everyone, and thanks for joining us for this special episode of We get work™ for the Year Ahead 2024 Report. We are here talking about what to expect in higher education for 2024. My name is Monica Khetarpal. I am a principal in our Chicago office and I co-chair our higher education industry group. I'm here with Susan Friedfel. Susan, you want to introduce yourself?

Susan Friedfel:

Sure. Hi, I'm Susan Friedfel and along with Monica I co-chair, the higher education Group here at Jackson Lewis, and I am in our New York metro region. As Monica said, we're here to talk about what we can expect in 2024 about higher education and 2023 was quite a year. There were very few days that went by where a college or university was not in the headlines. There was a lot of change and we can expect that that will continue into 2024, and we want to talk today about some things that you can be thinking about to be prepared.

Monica Khetarpal:

So obviously one of the huge issues was students for fair admissions. The Supreme Court case decided that affirmative action, as we knew it, have known it for many, many years or decades, needs to change or be eliminated. So looking to 2024, we know that schools have been reevaluating their admissions processes ever since June of '23 when the decision came out and probably before then as well, because

we all sort of knew how that decision was going to go. We think that there will be challenges to those admissions decisions and we'll see those lawsuits come up as soon as this admissions cycle closes. Schools have been trying all sorts of things to maintain their commitment to diversity, equity, and inclusion, and including among their admissions classes, while still complying with the students for fair admissions decision. And we'll see which ones of those are going to hold up under challenge.

There's a lot of good lessons for other parts of college and university operations in that as well. So this applies to managing employees or selecting board members, things like that. Anywhere where you are considering a protected category as part of substantial decision like employment or admissions, you're going to have to consider what students for fair admissions did or said. And we'll take those lessons from whatever lawsuits come out and apply them in different settings. Overlapping with this is the upcoming Muldrow decision. We heard arguments about a month ago, a month and a half ago in that at the Supreme Court, and that decision is going to decide whether the adverse impact element that we have always had in an employment discrimination challenge. The bar will be lowered is what we're expecting, and that may open up areas of challenge to, like I said, employment decisions including on campus or election of board members, other things as it overlaps with students for fair admissions. So that's definitely something to keep track of.

Another thing that we have seen is speech issues on campus. It has been a challenging time, not just for college presidents, but also for administrators in general because they're trying to navigate whatever's in the headlines, but that's not where these issues start or end. Susan.

Susan Friedfel:

So universities have always been a hotbed for speech and for some public institutions, of course, they're First Amendment considerations, but even for private institutions, there are questions of academic freedom and what the boundaries with respect to academic freedom versus the need to balance the desire to have a respectful environment and ensure that everyone feels safe and comfortable. This is quite a tightrope act these days. We've seen in congressional hearings and in the press that it's been very challenging. So without getting into the weeds too much, we do want to point out that we think that 2024 is a good time to kind of look at these policies about speech and academic freedom and make sure that they align with your institutional values and also look at them for practicality.

Make sure that they are broad enough to allow you to make the decisions that you need to make. You have a plan for how you're going to implement them and how you're going to enforce them, because that is where a lot of times things get complicated and understanding that this is not something you want to be doing on the fly. It's something that you want to make sure that you're prepared for and that you've thought through because some sort of controversy is going to come to your campus and the questions of speech and how you handle that speech is going to be an issue.

Monica Khetarpal:

Yeah, I totally agree, Susan. I think this is a really good time to take stock because these types of speech issues aren't starting or ending with the war in Gaza. All campuses have faced this issue. It might be when a senior administrator is accused of sexual misconduct, maybe there's a labor dispute. This is a relevant topic. Anytime what is in the news hits your campus or vice versa, and so it's really best practices to have a plan in place in advance. So that would include a crisis communications plan, responding to unrest on campus, managing donors. Basically, you want to take a beat now and look at those things and bring in all the people that need to weigh in order to create a proactive instead of a reactive plan and situation. So bring in your board, of course, bring in your president, bring in comms, HR, legal, DEI, all of these groups and administrators should contribute to a plan so that you can manage it when it happens.

The other thing is that this is more and more relevant as Gen Z is on campus, and Gen Alpha is just around the corner. We have found overall, obviously there are exceptions, but these generations are socially and politically active. They're very aware and they're very outspoken. So you want to make sure that your values and your policies and procedures are all aligning and also adapting to what they demand from their institutions. I know that there's a lot to say also on the title IX front as we've been waiting with bated breath for that. Susan, can you fill us in on whatever's happening on that front?

Susan Friedfel:

Sure. The latest news is that we are now expecting that the final regulations will come out in March. These are, of course, the regulations relating to sexual misconduct. They were revised in 2020 under the Trump administration, and the Biden administration released their proposed comments quite a while ago, and they have said that the final regulations were going to come out several months ago, and then they didn't. So the word is they'll be coming out in March. We don't know if that will actually happen, but in any event, I think it does make sense at this point to, as you're planning your year bank in some time, to prepare to make the changes to your Title IX policies when these new regulations do drop. Because they will drop at some point in the next year, whether it's March or April, we know that they're coming. We don't anticipate that the final regulations will differ dramatically from the proposed regulations.

So if you haven't done so already, I think it makes a lot of sense to think about how you would implement those proposed regulations. Like I said, we anticipate that they're going to be similar to the final regulations. So these are just a few of the topics that we wanted to highlight for 2024. Our higher ed group will be monitoring all of these developments and any new ones that should arise, and we'll be sure to keep you posted as things develop. If you do have questions or concerns, we're happy to speak with you, and you should contact myself or Monica or any of the members of our higher education team.

Alitia Faccone:

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