

**EMPLOYMENT AND LABOR LAW NETWORK OF THE
ASSOCIATION OF CORPORATE COUNSEL**

OUTSTANDING LARGE NETWORK OF THE YEAR AWARD NOMINATION

TO: Association of Corporate Counsel
Outstanding Network of the Year Award Judging Panel

FROM: Eric C. de los Santos
Chair, Employment and Labor Law Network

DATE: June 19, 2019

As Chair of the Employment and Labor Law Network (“ELLN” or the “Network”), and on behalf of ELLN’s Vice-Chair (April Goff), Secretary (Doug Hass), and Immediate Past Chair (Kevin Chapman), 38 Subcommittee leaders and over 6,700 members worldwide, I am pleased to nominate the ELLN for the Outstanding Large Network of the Year Award for the July 1, 2018 to June 30, 2019 period.

The ELLN is committed to making in-house attorneys better and is therefore dedicated to providing practical, top quality resources to its members and the ACC community. Our Network leaders spend immeasurable hours, many of them year after year, providing useful information, documents, programs, and networking opportunities for our members. The ELLN always has been on the leading edge of Network activity and engagement, and we believe that the breadth and depth of offerings provided by the ELLN is unparalleled by any other Network in the ACC.

This year, the ELLN placed a special emphasis on issues of diversity and inclusion to ensure that we continue to be innovative and relevant for our growing and diverse membership. We did this in a variety of ways from diversifying our network leadership, to reaching out to minority bar associations, to ensuring that a diversity session got selected at the Annual Meeting from the network. The result is to establish diversity and inclusion as a founding principle of the ELLN to ensure its growth and continued success.

As in prior years, the ELLN seeks to appeal to a broad range of in-house counsel, from employment law experts to attorneys who do not have the luxury of practicing employment law full-time. And this year was no exception. The leadership of the ELLN is focused on making sure that we continue to provide opportunities to not only appeal to a broad range, but to also provide opportunities for more in-depth learning experiences. To that end, we have planned virtual roundtables for new to in-house and small law department practitioners, to a roundtable for international attorneys on sexual harassment, and another roundtable later this year for our labor attorneys.

Our goal also is to provide members with timely information that will help them in their day-to-day duties, along with opportunities to meet and work with other members either through programs and

other ad hoc activities as part of the Network's leadership. The ELLN provides something for everyone, regardless of their level of experience or time available.

OUR NETWORK

The ELLN is the ACC's Network focused on employment, labor and employee benefits law for in-house practitioners. As noted above, the ELLN's leaders have made a concerted effort to appeal to in-house counsel broadly, regardless of location, industry, type of employer, years of experience or breadth of responsibilities. We work to offer programming and resources that meet the needs of generalists and subject matter experts, of new in-house counsel and in-house veterans.

OUR STRATEGY

The Network's Strategic Plan, which was developed in October of 2015, remains as relevant today as it was when we created it. The Plan focuses our work on three Guiding Principles. Those Guiding Principles outlined in our plan are:

Empower: We will strengthen the ELLN's role as the employment law resource of choice for ACC members by providing practical, timely and relevant education, programming and resources on employment law, labor and benefits law issues and educating members about the availability of the resources we have produced.

Expand: We will seek to expand ELLN's footprint and offerings to expand our members' awareness and expertise in all areas of employment, labor and benefits law. We will devote particular attention to expanding our coverage to international (non-U.S.) legal issues and members. Our overall membership increased this year to 6,683 members, with a higher water mark of 7,202 as of January 2019.

Connect: We will build upon the ELLN's past efforts to involve our members in ELLN activities and to enable our members to connect with one another on both substantive and professional topics. In addition, we will expand our outreach to other ACC Networks and Chapters and to ACC members who have not joined the ELLN; and we will offer our support to ACC HQ staff, who may call upon us to assist other ACC Networks, Chapters, or members. In short, we will be valuable members of and contributors to the ACC community at large.

This year, we aligned the Network's Strategic Plan and 2018-19 Goals with the ACC's Strategic Plan:

- **Transforming ACC products and services to offer members a more targeted and personalized experience based on their unique context.**

This year, we explored the idea of creating industry focused groups within the ELLN that would align with Jackson Lewis' professionals to address the labor and employment issues most pertinent to them. Those industry groups included: construction, healthcare, staffing and independent workforce, hospitality, higher education, pharma, retail, transportation, technology, real estate, and automotive. Our plan is to continue with this initiative and to create opportunities for ELLN members in similar

industries to communicate and exchange ideas involving labor and employment issues. It is our expectation that these groups will likely develop issues of special relevance that could lead to future programming. Additionally, we would leverage our relationship with Jackson Lewis to provide expertise on the issues raised by these industry-focused groups.

- **Bolstering ACC's efforts to enable productive connections, collaboration, and engagement between members with similar interests.**

In addition to the above, the ELLN sought to develop relationships outside of the ACC, in particular, with national minority bar associations (National Bar Association, Hispanic National Bar Association, National LGBT Bar Association, and the National Asian Pacific American Bar Association) to introduce the services and products to minority attorneys who practice in-house. These relationships will take time to develop and the current ELLN Leadership Team is committed to this.

- **Being the network of choice for in-house counsel worldwide by providing all members a first-rate customer experience regardless of their location.**

As evidenced by the materials we are submitting for this recognition, the ELLN leaders are working diligently to be the network of choice. We also recognize that growing global nature of our work and are aware of the need to find opportunities to integrate this global perspective in the delivery of our services and communications.

- **Shaping the environment in which members operate, so their contributions and counsel are highly valued and sought by their key stakeholders.**

The devoted members of the ELLN work tirelessly to ensure that its members have the most up-to-date guidance on new laws and the practical tools to address the myriad of labor and employment issues that its members are expected to address in the U.S. and globally. As such, delivering on this value add requires that the communication platforms we utilize provide for the quick, and easy exchange of information between our members. We want to make sure that our members can access accurate, relevant and timely information so that they be prepared to address the novel and routine issues that labor and employment attorneys face in their practice every day.

NOTEWORTHY ACHIEVEMENT

The ELLN had an outstanding year. A full report on the programming, resources and opportunities we made available to members is included in the accompanying Outstanding Network of the Year Award Nomination Form and Appendices. Of note, however, is the ELLN's focus and efforts on diversity and inclusion.

The Executive Leadership Team strategically focused on issues of diversity and inclusion in an effort to broaden the network's reach, increase the engagement and retention of members, build partnerships, and increase innovation in programming. Below are examples of our efforts on this front:

- The tone was set at the Annual Meeting where I stated, “As recipient of the ACC’s Matthew J. Whitehead Diversity Award, I am committed to issues of diversity and inclusion. . . It is important to note that we define diversity beyond what you see—it’s the external, as well as internal. It’s race, gender, age, but also experience, family upbringing, socioeconomic status—we all have a role and stake in it. . . We will continue to infuse D&I principles in carrying out our work—looking to our Programs Subcommittee to implement a process for reviewing our panels for diversity in all forms; finding ways to connect with in-house employment attorneys who are also members of minority bar associations.

- We diversified our network leadership. We have a total of 38 network executive leaders and subcommittee members. Here is the breakdown:
 - 58% women; 42% men
 - 18.4% are racial minorities
 - Our leaders represent the African American, Hispanic, Asian American, and LGBTQ communities

- We are committed to mentoring our diverse network leaders through personalized interactions and check ins. We actively encourage their increased participation in network activities and are always looking for opportunities to highlight them, whether it be through moderating an eGroup topic or presenting reports during monthly calls.

- We conducted outreach to the following national organizations:
 - National Bar Association
 - Hispanic National Bar Association
 - National Asian Pacific American Bar Association
 - LGBT Bar Association

- We got level set with our sponsor Jackson Lewis regarding the importance of diversity on all our projects, particularly in the selection of speakers for LQHs and webcasts. We were vocal at every opportunity to recognize Jackson Lewis for their leadership in this area on monthly calls and especially highlighted the diversity of their attorneys when describing their bios. Monica Kheterpal is an example of a Jackson Lewis attorney who we commended for her leadership in the South Asian community. We also applauded Jackson Lewis during our monthly call for recognizing Pride when it rainbow-ized its traditional blue logo.

- We worked with our Programs Co-Chairs to ensure that we would have at least one diversity and inclusion focused panel for submission to the ACC for consideration at our Annual Meeting. We submitted two and one was adopted, “An In-House Lawyer’s Role in Eliminating Unconscious Bias Inside the Corporate Law Department.”

- We especially focused on getting panelists from a wide array of differing backgrounds (race, gender, experience, geography, industry, company size, etc.) to ensure dynamic and interesting sessions. To this end, we developed a questionnaire that afforded interested speakers the opportunity to tell us what unique perspective they would bring to the panel. As we had a record number of interested speakers, the Programs Co-Chairs took great care to put together expert panels that were balanced and reflected the diversity of our members.
- We are committed to making diversity and inclusion part of the DNA of the ELLN. We are very fortunate to have our upcoming leaders, April Goff (Vice-Chair), and Douglass Hass (Secretary) equally committed and enthusiastic about these issues, and ensuring that D&I will be a continued focus for years to come and likely formally adopted into our next strategic plan.

The impact of diversity and inclusion efforts may not be immediately realized, but the ELLN's actions to date, and the commitment to these issues from our upcoming leaders guarantees a diverse and vibrant future for the network.

Outstanding Large Network of the Year Award Nomination (2019)

Network: Employment & Labor Law Network

Judging Criteria

<p>Infrastructure and Strategic Planning</p>	<p>Develop and administer a strategic plan (Please attach).</p>	<p>Yes: X</p> <p>A copy of the Network’s Strategic Plan is attached as Appendix A.</p> <p>For convenience, the Committee’s Strategic Plan, execution and achievement of goals are summarized in the accompanying memorandum from Chair Eric de los Santos (“Committee Summary Memorandum”). Note that the Network’s Charter was updated in 2018 to include information about recently created subcommittees, statements of purpose and expectations. (See copy of our updated Charter, attached as Appendix F)</p>
	<p>Have a full slate of executive network leaders? (Chair, Vice-Chair, Secretary, Program Chair)</p>	<p>Yes: X</p> <p>A full chart of Network leaders and subcommittee leaders is attached as Appendix B.</p> <p>Chair: Eric de los Santos Vice-Chair: April Goff Secretary: Douglas Hass Immediate Past Chair: Kevin Chapman Programs Subcommittee Co-Chairs: Rachel Barack; Michael Booden, Marjory Robertson, Susan Tahernia, and Nikki Odom.</p>
	<p>Succession Plan (Please attach.)</p>	<p>Yes: X</p> <p>A description of the Network’s Succession Plan is attached as Appendix C.</p>
	<p>Submitted/Completed required forms (Annual Officer Report, Self-Assessment, Goals)</p>	<p>Yes: X</p> <p>Two of three required forms have been submitted. Additionally, the following 4 goals for 2018-19 were communicated by the Network Chair to the ACC:</p> <p>Goal 1 - Grow and diversify ELLN Membership through (a) targeted outreach to in-house employment counsel from minority bar associations (b) adopt process to ensure diversity on speaking panels (c) develop program submissions focused on diversity and inclusion (d) identify diverse members for future leadership and mentor.</p>

		<p>Goal 2 - Increase membership engagement and communication through (a) creation of LinkedIn Group and exploring other social media platforms; (b) newsletter makeover; (c) monthly legal movie recommendations.</p> <p>Goal 3 - Provide for more volunteer opportunities through (a) the creation of a volunteer database and tracking volunteerism (b) creation of leadership database and possible advisory board (c) finding more opportunities to recognize volunteers.</p> <p>Goal 4 - Expanding programming through (a) additional group calls for the Labor & ERISA subcommittees (b) a survey of international employment law attorneys and then to conduct a roundtable to occur in the summer based on the responses (c) a survey of general practitioners and new to in-house counsel) and then to conduct a roundtable in the spring based on the responses (d) partnership and co-sponsorship of activities by local chapters.</p>
	<p>Have sub-committees and leadership in place</p>	<p>Yes: X</p> <p>A full chart of Network leaders and subcommittee leaders is attached as Appendix B. The ELLN has expanded its roster of subcommittee and “Focus Area” leaders so that each sub-group has a bench of volunteer leaders ready to pitch in to accomplish goals. This permits leaders to move on to other subcommittees or Network leadership roles, leaving each subcommittee with a strong group of experienced co-chairs to continue the mission of each group. At present we have 38 Network leaders, including the Executive Leadership team.</p> <p>Last year, the ELLN established the Library/Archives Task Force, which was formed to assist in fulfilling an important objective, which is improving the accessibility of documents and other resources in the ACC library.</p> <p>The ELLN delivers most of its member services through its Subcommittees. For example, the Programs Subcommittee coordinates Annual Meeting program development; the Absence & Disability Management Subcommittee, Policy Subcommittee, Labor Subcommittee, ERISA Subcommittee, and Health & Safety Subcommittee all prepare substantive reports of legal developments for the Committee’s monthly teleconferences; the Webcasts Subcommittee coordinates the ELLN’s webcast schedules; the InfoPaks Subcommittee coordinate the creation of practice guides, and so on. This arrangement allows Subcommittee co-chairs to have direct impact on the ELLN’s operations. Our Network is fortunate that many of its Subcommittee co-chairs return to their</p>

		<p>leadership roles (or move into different leadership roles) over a series of years. This dedication to the ELLN is reflected in the continued innovative and expanding program opportunities for all Committee members.</p>
	<p>Communicates with sponsor at least quarterly</p>	<p>Yes: X</p> <p>The ELLN Leadership Team has an exemplary relationship with its Network Sponsor Jackson Lewis. Following the installation of the new officers, Jackson Lewis attorneys and marketing team members work closely with the ELLN leadership team to plan materials and presentations for the upcoming year.</p> <p>All materials and presentations are created based on member requests, interest and legal developments impacting employers nationally and regionally. Each year, our involvement with the ELLN begins at the ACC Annual Meeting in October where we join the ELLN meeting and work with the Network to strategically plan for the year ahead.</p> <p>Monthly meetings were then scheduled to plan Legal Quick Hits and other educational presentations, develop materials, and address all relevant legal developments. The teams also met to discuss the progress of other projects and initiatives, particularly with respect to diversity and inclusion.</p> <p>Jackson Lewis attorneys and representatives are continuously working with the ELLN to co-sponsor various programs, including developing new formats, throughout the year that will better serve ACC members across the nation not just those that are a part of the ELLN. This year, we explored the idea of creating industry focused groups within the ELLN that would align with Jackson Lewis’ professionals to address the labor and employment issues most pertinent to them. Those industry groups included: construction, healthcare, staffing and independent workforce, hospitality, higher education, pharma, retail, transportation, technology, real estate, and automotive.</p>
	<p>Attend monthly NLC calls</p>	<p>Yes: X</p> <p>With the exception of January 2018, there has been at least two members of the ELLN Leadership Team present on every NLC call this year. Network leaders actively participate on the calls. The Team has been very vocal at meetings on issues of diversity, sponsor relationships, member engagement, and the current teleconference platform. In November of 2018, ELLN Chair Eric de los Santos presented on Sponsor Relationships and Best Practices. In May of 2019, ELLN Immediate Past Chair Kevin Chapman</p>

		presented on Network and Sponsor Award Nominations Best Practices.	
	Attend position based training (Membership Chair, Communications Chair) if applicable.	Yes: X As stated earlier, the ELLN has expanded its roster of subcommittee so that each sub-group has a bench of volunteer leaders ready to pitch in to accomplish goals. We also take steps to ensure that there is a mix of experienced and new leaders in each sub-group to ensure training and an effective transfer of subcommittee duties. This mix of experienced and new leaders exists for each subcommittee, including the Membership and Communications Subcommittees. In addition, co-chairs will meet with ACC staff to receive training and guidance regarding the organization's processes and systems.	
	Hold monthly network calls	Yes: X We have held monthly meetings each month except for the October meeting, which is live at the Annual Meeting. Attendance numbers for our meetings is consistently in the top tier among all Networks, averaging approximately 76 callers over the past 11 months (excluding October, during which we held our Annual Meeting Business Lunch in lieu of a monthly call). This represents an 8.5% increase in the number of average callers per meeting over last year's statistics. We also sought to spark lively conversation through development of the "eGroup Spotlight." Prior to each meeting the Communications Subcommittee will review our eGroup to identify trending topics for discussion during the monthly network calls. The spotlight topics and relevant discussion are included in the minutes of the ELLN monthly calls.	
	Prepare Meeting Agendas	Yes: X Our monthly agenda is posted on our website, LinkedIn Group, and/or eGroup (Forum) before each meeting. This year, in an effort to increase readership of the agenda, we developed the Legal Movie Quick Pick Series. Beginning in November 2018, we began a year-long series of cinematic picks showcasing various films with a legal theme or setting. Many were of titles not heard of, in the hope that our members' interests will be piqued and their cinematic world enriched. Each movie review is original and was created by an ELLN member's spouse who has a background in cinema and film history. Attached as Appendix D are sample meeting agendas.	
	Prepare Meeting Minutes	Yes: X	

		<p>Attached as Appendix E are samples of post-meeting minutes, which are prepared after each meeting and posted on our committee web page, our LinkedIn Group, and/or on the eGroup. Minutes include ACC announcements, educational opportunities and events, summaries of the Legal Quick Hit (LQH) discussion and a link to the LQH presentation slides, summaries of the eGroup Spotlight discussions, and summaries of the reports of each Subcommittee. Also, for those Subcommittees reporting on substantive legal developments, the minutes include the Subcommittee’s written report, including case citations and detailed explanations that go beyond the information that could be imparted during a few minutes of live meeting time. Our Policy Subcommittee has had a written report each month, and other written reports by the Labor, ERISA, Absence Management, and Health & Safety Subcommittees have been included when substantive reports were necessary, which include citations to relevant cases and links to website and statutes. These reports are usually posted in advance of the meetings to ensure members have the chance to review them and prepare for a productive call and so that minor details need not be recited orally, which makes the oral subcommittee reports more efficient.</p>
Resources	InfoPAKs Title(s):	<p>Yes: X</p> <p>The ELLN created and published to the ACC community one substantive InfoPak this year, “Critical Issues in Global Employment Law for the Multinational In-house Counsel.” In this in-depth 77-page guide, ACC members can learn about key issues and practical tips regarding global labor regulations, termination practices, discrimination law, collective dismissals, transfers of undertaking, confidentiality agreements and post-employment restrictive covenants, setting up international operations, international labor standards, global mobility, and more. They can also find practical tools at the end of the guide - a template separation agreement, and template language for plans/strategies subject to works council processes.</p>
	Sample Forms/Policies for Virtual Library Title(s):	<p>Yes: X Total: TWENTY-FOUR (24).</p> <ol style="list-style-type: none"> 1. The Growing Wave of ADA Web Accessibility-Related Lawsuits 2. Template for Separation Agreement (US) 3. Template Language for Plans-Strategies to Works Council Processes (Global) 4. Preparing for a Natural Disaster 5. E-Discovery in Class Actions 6. Classifying Workers as Independent Contractors 7. Surviving an Employee Benefit Plan Audit 8. ADA Web Compliance

		<ol style="list-style-type: none"> 9. U.S. Organizations and the GDPR 10. Immigration Document Retention 11. Non-Compete and Restrictive Covenants 12. US Reporting and Non-Retaliation Policy Template 13. Opioids in the Workplace 14. Former Employee Payment for Time Spent as Witness 15. Defending Pay Practices 16. What To Do in the Event of an ICE Raid 17. Ten Common Wage and Hour Mistakes 18. Pros and Cons of Employment Arbitration Agreements 19. Important Provisions to Include in Separation and Settlement Agreements 20. Complying with the Fair Credit Reporting Act's Requirements for Disclosure 21. Reacting to a Data Breach 22. Background Check Compliance: Best Practices 23. Class Action Waivers Arbitration Agreements 24. Determining Employee Exemptions 25. Avoiding and Responding to a Social Media Attack <p>In addition, our members have posted dozens of sample forms, policies, checklists, PowerPoint presentations, and other practical materials as attachments to responses to inquiries on the eGroup, many of which have been added by ACC to the formal library/archives.</p>	
	<p><i>ACC Docket</i> Article Title(s):</p>	<p>Yes: X Total: NINE (9)</p> <ol style="list-style-type: none"> 1. <i>Contractor or Employee? Dynamex Decision Classifies Workers with ABC Test</i> 2. <i>What Kavanaugh's Supreme Court Appointment May Mean for US Employers</i> 3. <i>Using a Temporary Restraining Order (TRO) to Halt a Former Employer's Noncompete</i> 4. <i>Why Employers Should Worry About the E-scooter Craze</i> 5. <i>The Impact of the US Government Shutdown on Employers</i> 6. <i>Garden Leave: Massachusetts Employers Study Abroad to Shape Their Noncompete Legislation</i> 7. <i>Employment Law Developments Around the World</i> 8. <i>Around the World: Employment Law Changes</i> 9. <i>How to Make Global Employee Communications Comply with Overseas Translation Mandates</i> 	
	<p>ACC Top Ten Title(s):</p>	<p>Yes: X Total: FOUR (4)</p> <p><u>Top 10 Tips to Avoid Legal Liability for Taking Employment Action Against Protected Concerted Activity</u></p>	

		<p><u>When ICE Comes Knocking</u></p> <p><u>Ten Things You Should Know about Puerto Rico Law</u></p> <p><u>Top Ten Changes Businesses Need to Know About U.S. Immigration in 2019</u></p> <p>.</p>
	ACC Quick Overview Title(s):	<p>Yes: X</p> <p>Total: THREE (3)</p> <p><u>What Employees Need to Consider in the #MeToo Era</u></p> <p><u>Employers Beware: Protected Concerted Activity Under the National Labor Relations Act</u></p> <p><u>Marijuana in the United States, It's High Time to Plan Your Company's Response</u></p>
	<p>Forum Traffic: (ACC will provide stats, but it would be helpful to describe your efforts to engage members on the Forum)</p> <p>Low (0-0.99) Medium (1-1.99) High (2+): 50 points</p>	<p>Yes: X</p> <p>The ELLN has high forum traffic on the eGroup (Forum). As of April 2019, the ELLN had 6,484 current members with 2132 public messages. Since July 1, 2018, the eGroup has had 761 new threads.</p> <p>Our members have contributed to daily posts and responses in the ELLN Forum. Posts frequently include advice about attending ACC events and meetings, assistance selecting local counsel in out-of-the-way places, detailed responses to very specific issues, and often attach sample forms, agreements, check-lists, and PowerPoint presentations. Our members have stepped up and assisted their fellow members. Our eGroup is one of the most visited and most useful to members. Our subcommittee leaders regularly monitor the eGroup to ensure that no question goes unanswered.</p> <p>In an effort to increase member engagement, the ELLN created an eGroup Spotlight to discuss topics trending on the eGroup during its monthly meetings.</p>
	<p>Unique Forum Contributors</p> <p>Low (0-3.9%) Medium (4-7.99%) High (8%+)</p>	<p>As of April 2019, we had 434 unique contributors to the eGroup (Forum). This represents approximately 6.52% of the current subscribed community members.</p>
Membership	Membership Growth Percentage	<p>Yes: X</p> <p>Our overall membership numbers are up 1.17% as of the latest month of data, for a total of 6,683 members.</p>

		<p>The ELLN Leadership Team and Membership Subcommittee have always been focused on membership growth and engagement. At the beginning of the year, the Team conducted outreach to various national minority bar associations to introduce the ELLN. The long term goal is to establish regular and consistent communications with these associations in the hopes of identifying future opportunities for partnership. The Team also worked closely with its sponsor Jackson Lewis to develop compelling LQHs and virtual roundtables that would drive interest in the network.</p> <p>On its most recent call, the LQH devoted to ADA website accessibility issues brought in 128 participants. The virtual roundtable featuring lessons learned from season L&E counsel drew in over 140 participants.</p> <p>Our Membership Subcommittee has continued and expanded its mentor program, called the “Connections Program,” which was started in 2017 to link new members with more experienced employment & labor attorneys to provide more individualized one-on-one resources. Participants were introduced by e-mail from the membership subcommittee and then encouraged to meet, call or otherwise get in touch. This year, we solicited feedback on the mentor program from participants to enhance the experience.</p>
	<p>LQH/Network Call participation increases over last year</p>	<p>Yes: X</p> <p>We have held monthly meetings each month except for the October meeting, which is live at the Annual Meeting. Attendance numbers for our meetings is consistently in the top tier among all Networks, averaging approximately 76 callers over the past 11 months (excluding October, during which we held our Annual Meeting Business Lunch in lieu of a monthly call). Last year, the average network call participation was 70 This represents an 8.5% increase in the number of average callers per meeting over last year’s statistics.</p>
	<p>Sends a newsletter</p>	<p>No.</p> <p>This year, our Communications Subcommittee has been focused on our newly created LinkedIn Group (currently 529) members and using this vehicle to distribute network news and information.</p>
	<p>Includes enhanced webpage elements</p>	<p>Yes: X</p>
	<p>Promotes ACC services/resources in newsletters, in email/social media,</p>	<p>Yes: X</p>

	during monthly meetings, or annual survey.	At every opportunity, the ELLN promotes the services of the ACC. This includes the Annual Meeting, monthly network calls, eGroups (Forums), social media, and surveys.
	Sends a monthly email	Yes: X Throughout the course of the year, ELLN members will receive various emails from the network announcing events and presentations, as well as communications seeking volunteers or requesting feedback.
	Identify member interests through surveys or polls for programming, including, but not limited to Annual Meeting	Yes: X We have conducted a poll of membership each year, including last September just before the annual meeting. The survey both drives ideas for topics for presentations and resources and serves as a valuable source of volunteers who have stepped forward to assist our ongoing work. Attached as Appendix G is the mentorship evaluation report.
Programs	Legal Quick Hits Title(s)	Yes: X Total: Since July of 2018, Jackson Lewis has provided 11 LQHs. <ol style="list-style-type: none"> 1. Conducting C-Suite Investigations in the Weinstein and #metoo era. (July 2018) 2. Executing Confidentiality Provisions in the #MeToo Environment. (August 2018) 3. New Rules for Pregnancy Accommodations: How to Ensure Your Organization is Compliant. (September 2018) 4. OFCCP's New Compensation Directive: What Contractors Need to Know (November 2018) 5. ICE I-9 Audits and Raids. (December 2018) 6. Employment & Labor Law: A Look Back and Ahead (January 2019) 7. Trends in Designing Paid Leave and TRO Programs (February 2019) 8. Non-Competes and Restrictive Covenants Under Assault (March 2019) 9. Pay Equity (April 2019) 10. Wage and Hour Considerations for Independent Contractors. (May 2019) 11. What is Behind the Growing Wave of ADA Website Accessibility Lawsuits? (June 2019)
	Webcasts/Virtual Roundtables Title(s):	Yes: X Total: Since July of 2018, Jackson Lewis organized in conjunction with ACC's Webcasts subnetwork produced a total of seven webcasts and one virtual roundtable; in addition to three scheduled webcasts and two virtual roundtables taking place this coming summer and fall.

		<ol style="list-style-type: none"> 1. US Employer’s Guide to the FMLA (September 2018) 2. The ABCs of the ADA: Back to the Basics (November 2018) 3. Light Duty: Ins and Outs (November 2018) 4. Class Action Waivers: The Murphy Decision and Its Implications (December 2018) 5. Top Labor Law Developments (December 2018) 6. Pay equity: Everyone is Talking About Pay and They Are Doing So Publicly (May 2019) 7. Coaching Soccer When All You Know is Football (Scheduled: June 2019) 8. Protecting Your Playbook and Navigating the New Reality: Non-Competes and Restrictive Covenants Under Assault (Scheduled: August 2019) 9. Keep Your Eyes on the Ball: NLRB in Transition (Scheduled: September 2019) 10. Protecting you Playbook (Scheduled: August 2019) 11. Keep your eye on the ball (Scheduled: September 2019) 12. ACC Virtual Roundtable: Labor and Employment Basics: Lessons Learned from Seasoned L&E Counsel (March 2019) 13. ACC Virtual Roundtable: Sexual Harassment Not Just a U.S. Issue (Scheduled: July 2019) 14. ACC Virtual Roundtable: Labor (September 2019)
	Co-Sponsored Events Title(s):	<p>Yes: X</p> <p>In December of 2018, the ELLN co-sponsored the program, “No Mistletoe, and Other Workplace Holiday Party Employment Law Best Practices,” with the New to In-House Network. Additionally, this year’s virtual roundtable involving advice from seasoned counsel was done in conjunction with the New to In-House and Small Law Department Networks.</p>
Annual Meeting Participation	LDI Participation:	<p>Yes: X</p> <p>Members of the ELLN Leadership Team and Network Subcommittee Leaders attended LDI this past October in Austin. Additionally, ELLN Chair Eric de los Santos moderated a roundtable discussion regarding sponsor relationships.</p>
	Developed Program Submissions for AM and/or other ACC Meetings	<p>Yes: X</p> <p>The Programs Subcommittee worked diligently to develop a slate of programs for the Annual Meeting. Five of those submissions were accepted:</p> <ol style="list-style-type: none"> 1. Employment Law Update 2. A Primer on Key Employee Benefits for Non-Benefits Lawyers

		<ol style="list-style-type: none"> 3. An In-House Lawyer’s Role in Eliminating Unconscious Bias Inside the Corporate Law Department 4. How Privacy Legislation is Increasingly Impacting the Workplace 5. Paid Family and Medical Leave Laws are Coming! Practical Tips to Help You Prepare <p>We had a record number of individuals interested in speaking on the selected panels. As such, the Programs Subcommittee took special effort to seek diverse panelists from varied walks of life, backgrounds, and experience level to ensure dynamic and engaging presentations.</p> <p>This month, the ELLN leaders will be participating on two panels at ACC’s Corporate Counsel University in Minneapolis. Labor Subcommittee Co-Chair Derek Lipscombe will be a speaker on, “Key Employment Issues Part I: Keeping the Business Going.” ELLN Chair Eric de los Santos will be a speaker on, “Key Employment Issues Part II: When Trouble Arises.” Additionally, ELLN members Shannon Sorrels and Rachel Lipton will be panel speakers.</p>
	<p>Holds AM Business Meeting</p>	<p>Yes: X</p> <p>The ELLN holds its AM Business Meeting each year, with 50-75 guests in attendance. At the annual meeting, a recap of the year’s activities are highlighted and network leaders are recognized. The ELLN Leadership Team will also outline the goals for the upcoming year. There will also be structured roundtable discussions to solicit feedback from attendees to assist with programming for the upcoming year.</p>
	<p>Sponsor hosts events for members and/or leadership</p>	<p>Yes: X</p> <p>Jackson Lewis has sponsored at the platinum level and have for over 20 years. The firm host a dinner for all ELLN members during the conference as well as smaller dinners and receptions at the exhibition booth and with ELLN leadership.</p>
<p>Strategic Alignment with ACC:</p>	<p>The work of the ELLN aligns with ACC’s Strategic Plan in the following ways:</p> <ul style="list-style-type: none"> • Transforming ACC products and services to offer members a more targeted and personalized experience based on their unique context. <p>This year, we explored the idea of creating industry focused groups within the ELLN that would align with Jackson Lewis’ professionals to address the labor and employment issues most pertinent to them. Those industry groups included: construction, healthcare, staffing and independent workforce, hospitality, higher education, pharma, retail, transportation, technology, real estate, and automotive. Our plan is to continue with this initiative and to create opportunities for ELLN members in similar industries to communicate and exchange ideas involving labor and employment issues. It is our expectation that these groups will likely develop issues of special relevance that could lead to future programming. Additionally, we would</p>	

	<p>leverage our relationship with Jackson Lewis to provide expertise on the issues raised by these industry-focused groups.</p> <ul style="list-style-type: none"> • Bolstering ACC’s efforts to enable productive connections, collaboration, and engagement between members with similar interests. <p>In addition to what is stated above, the ELLN is seeking to develop relationships outside of the ACC, in particular, with national minority bar associations (National Bar Association, Hispanic National Bar Association, National LGBT Bar Association, and the National Asian Pacific American Bar Association) to introduce the services and products to minority attorneys who practice in-house. These relationships will take time to develop and the current ELLN Leadership Team is committed to this.</p> <ul style="list-style-type: none"> • Being the network of choice for in-house counsel worldwide by providing all members a first-rate customer experience regardless of their location. <p>As evidenced by the materials we are submitting for this recognition, the ELLN leaders are working diligently to be the network of choice. We also recognize that growing global nature of our work and are aware of the need to find opportunities to integrate this global perspective in the delivery of our services and communications.</p> <ul style="list-style-type: none"> • Shaping the environment in which members operate, so their contributions and counsel are highly valued and sought by their key stakeholders. <p>The devoted members of the ELLN work tirelessly to ensure that its members have the most up-to-date guidance on new laws and the practical tools to address the myriad of labor and employment issues that its members are expected to address in the U.S. and globally. As such, delivering on this value add requires that the communication platforms we utilize provide for the quick, and easy exchange of information between our members. We want to make sure that our members can access accurate, relevant and timely information so that they be prepared to address the novel and routine issues that labor and employment attorneys face in their practice every day.</p>
<p>Noted Achievements</p>	<p>What makes your Network especially worth of receiving Network of the Year?</p> <p>The ELLN is especially worth of receiving Network of the Year because of its strategic focus on issues of diversity and inclusion in an effort to broaden the network’s reach, increase the engagement and retention of its members, build partnerships, and increase innovation in programming. Below are examples of the networks efforts on this front. The impact of diversity and inclusion efforts may not be immediately realized, but the ELLN’s actions to date, and the commitment to these issues from our upcoming leaders guarantees a diverse and vibrate future for the network.</p> <p>Below are examples of our efforts on this front:</p> <ul style="list-style-type: none"> • The tone was set at the Annual Meeting where I stated, “As recipient of the ACC’s Matthew J. Whitehead Diversity Award, I am committed to issues of diversity and inclusion. . . It is important to note that we define diversity beyond what you see—it’s the

external, as well as internal. It's race, gender, age, but also experience, family upbringing, socioeconomic status—we all have a role and stake in it. . . We will continue to infuse D&I principles in carrying out our work—looking to our Programs Subcommittee to implement a process for reviewing our panels for diversity in all forms; finding ways to connect with in-house employment attorneys who are also members of minority bar associations.

- We diversified our network leadership. We have a total of 38 network executive leaders and subcommittee members. Here is the breakdown:
 - 58% women; 42% men
 - 18.4% are racial minorities
 - Our leaders represent the African American, Hispanic, Asian American, and LGBTQ communities

- We are committed to mentoring our diverse network leaders through personalized interactions and check ins. We actively encourage their increased participation in network activities and are always looking for opportunities to highlight them, whether it be through moderating an eGroup topic or presenting reports during monthly calls.

- We conducted outreach to the following national organizations:
 - National Bar Association
 - Hispanic National Bar Association
 - National Asian Pacific American Bar Association
 - LGBT Bar Association

- We got level set with our sponsor Jackson Lewis regarding the importance of diversity on all our projects, particularly in the selection of speakers for LQHs and webcasts. We were vocal at every opportunity to recognize Jackson Lewis for their leadership in this area on monthly calls and especially highlighted the diversity of their attorneys when describing their bios. Monica Kheterpal is an example of a Jackson Lewis attorney who we commended for her leadership in the South Asian community. We also applauded Jackson Lewis during our monthly call for recognizing Pride when it rainbowized its traditional blue logo.

- We worked with our Programs Co-Chairs to ensure that we would have at least one diversity and inclusion focused panel for submission to the ACC for consideration at our Annual Meeting. We submitted two and one was adopted, “An In-House Lawyer’s Role in Eliminating Unconscious Bias Inside the Corporate Law Department.”

- We especially focused on getting panelists from a wide array of differing backgrounds (race, gender, experience, geography, industry, company size, etc.) to ensure dynamic and interesting sessions. To this end, we developed a questionnaire that afforded interested speakers the opportunity to tell us what unique perspective they would bring to the panel. As we had a record number of interested speakers, the Programs Co-Chairs took great care to put together expert panels that were balanced and reflected the diversity of our members.

- We are committed to making diversity and inclusion part of the DNA of the ELLN. We are very fortunate to have our upcoming leaders, April Goff (Vice-Chair), and Douglass Hass (Secretary) equally committed and enthusiastic about these issues, and

	ensuring that D&I will be a continued focus for years to come and likely formally adopted into our next strategic plan.
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Respectfully submitted
ACC Employment & Labor Law Network

Eric de los Santos, Chair
April Goff, Vice-Chair
Douglas Hass, Secretary
Kevin Chapman, Immediate Past Chair

APPENDICES

- Appendix A: ELLN Strategic Plan (2015-16)
- Appendix B: 2018-19 ELLN Leadership Roster
- Appendix C: Succession Planning
- Appendix D: ELLN Meeting Agenda Samples
(Nov. 2018, Dec. 2018, March 2019, April 2019)
- Appendix E: ELLN Meeting Minutes Samples
(Nov. 2018, Jan. 2019, March 2019, May 2019)
- Appendix F: ELLN Network Charter (Updated May 2018)
- Appendix G: ELLN Mentorship Program Evaluation

APPENDIX A – NETWORK STRATEGIC PLAN

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW COMMITTEE 2015-2016 STRATEGIC PLAN

Approved by ELLC Executive Leadership

I. MISSION

For over a decade, the Employment & Labor Law Committee (“ELLC” or the “Committee”)’s central mission and purpose has been to cultivate and support a dynamic, highly collaborative, volunteer-driven association that serves to help its members and the organizations they support. The ELLC has fulfilled its mission by providing “a central resource for all ACC members with an expertise or interest in employment, labor and benefits law matters” and “a network for its members to further keep current and consult on the latest case laws and legislative and regulatory actions affecting employment, labor and benefits law.”

The Committee’s decade-old mission is of sustained relevance. In the 2015-2016 operating year, therefore, the ELLC will continue to provide a diverse range of programs, services and collaborative opportunities focused on employment, labor and employee benefits law issues. In addition, the ELLC will expand its scope to cover international (non-U.S.) legal issues more deliberately than in the past, both organizationally and programmatically. The ELLC also will continue its tradition of partnering with ACC Headquarters (“ACC HQ”) on advocacy relevant to ELLC’s members and their organizations.

The Strategic Goals for the 2015-2016 year are set out in detail below. They are organized around the strategic theme of *Empower, Expand and Connect*, which serves to remind ELLC leaders of the core need to empower our members to be their best, to help them expand their knowledge of employment, labor and benefits laws and to connect them to each other and to the ACC community for collegueship, insight and support.

In keeping with ACC’s FY 2013-2018 Strategic Plan, the ELLC will give special attention to (i) strengthening and expanding opportunities for our members to collaborate with one another, with other Committees, with Chapters and with ACC HQ; (ii) developing innovative programs, initiatives and ways of meeting member needs, including through cross-Committee programs and special topical programs; (iii) developing programs and resources for the next generation of in-house counsel; and (iv) sharing best practices with our sister Committees. The ELLC’s increased focus on international legal programming and resources and on targeted advocacy further aligns with ACC’s Strategic Plan and reflects ELLC’s desire to play a key role attracting and retaining ACC members.

Accordingly, consistent with its Charter, the Committee hereby sets the strategic goals and objectives described below for the year running from October 19, 2015 through October 18, 2016.

II. STRATEGIC GOALS AND OBJECTIVES

A. EMPOWER

Statement of Goal. We will strengthen the ELLC's role as the employment law resource of choice for ACC members by providing practical, timely and relevant education, programming and resources on employment, labor and benefits law issues and educating members about the availability of the resources we have produced.

Operating Tactics. We will pursue the following tactics to reach our goal:

1. *We will Produce a Strong, Collaborative Annual Meeting Track.* The ELLC will develop and propose a compelling programs track for the 2016 Annual Meeting in San Francisco, CA. Our proposed programs will cover timely U.S. and international legal challenges and developments; some will be designed to appeal to subject matter experts (responding to member requests for more in-depth programming for experts) and some to new-to-in-house and general practice audiences (responding to ACC's request for programming that appeals to the next generation of in-house attorneys and to generalists). We will partner with other Committees and with ACC sponsors to provide the best possible programming slate. Our Programs Subcommittee will lead this work.

2. *We will Develop and Offer Diverse, Topical and Timely Webcasts.* We will continue our tradition of offering Webcasts on a variety of employment, labor and benefits law topics. Our Webcasts Subcommittee will lead this work.

3. *We will Develop and Offer Useful Resources.* We will continue to develop topical InfoPaks and Shared Wisdom sessions and we will encourage our members to produce, and will assist them with producing, articles for the *ACC Docket*. We also will attempt to host one or two virtual "brown bag" sessions for subject matter experts who want to explore a topic in depth with colleagues. Our Communications, InfoPaks, Membership and Webcasts Subcommittees will lead this work.

4. *We will Produce Substantive and Valuable Monthly Calls.* We have received feedback that the quality of our monthly membership teleconferences is outstanding. We will build on our success by continuing to host substantive monthly calls, with some enhancements. This year, the first half of each call will offer a Legal Quick Hit and a Sounding Board (an informal, member-led discussion of practical strategies for handling a legal issue of broad membership interest); we will rearrange the Subcommittee updates in the second half of the call so that substantive legal reports are given before administrative reports, responding to membership feedback. Our Chair will lead the calls and set the agenda; our Secretary will keep attendance and coordinate the Sounding Board; our members will be encouraged to present the Sounding Board; and our Subcommittees will handle individual reports.

5. *We will Educate our Members about the Breadth and Depth of Legal and Professional Development Resources and Tools available to them through ACC.* We know we have many excellent resources for our members. We also know that your members do not always know where or how to find them. We will take steps to ensure that members know what is available and how to access it. Our InfoPaks, Membership and Webcasts Subcommittees will lead this work.

6. *We will Continue to Deliver Access to Agency Leaders through In-Person Meetings.* We have had great success affording our members access to U.S. administrative agency leaders through in-person meetings in Washington, D.C. We will seek to host at least one such in-person meeting again this year,

focusing on some of the more pressing issues that face our members. Our Membership Subcommittee will lead this work in partnership with our Programs Subcommittee, other interested members and ACC HQ staff.

7. *We will Partner with ACC on Advocacy Issues.* We will continue to seek opportunities to advocate on behalf of our members and their organizations in partnership with ACC HQ. We plan to submit an *amicus* brief in connection with *Banner Health System d/b/a Banner Estrella Medical Center*, 362 NLRB No. 137 (June 26, 2015), an appellate case whose outcome is of critical importance to ELLC members and their organizations. We will seek additional advocacy opportunities throughout the year, as well. Our Advocacy Liaison will lead this work, in partnership with the ELLC Executive Leadership team, ACC HQ's VP and Chief Legal Strategist (Amar Sarwal) and other ACC HQ staff.

This list is not intended to limit our operating tactics, which we may adjust or augment as circumstances warrant.

B. EXPAND

Statement of Goal. We will seek to expand ELLC's footprint and offerings to expand our members' awareness and expertise in all areas of employment, and labor and benefits law. We will devote particular attention to expanding our coverage to international (non-U.S.) legal issues and members.

Operating Tactics. We will pursue the following tactics to reach our goal:

1. *We will Establish a New International Subcommittee.* ACC's latest census shows that its members—and hence ours—increasingly have global responsibilities. We will work to develop a new International Subcommittee to focus on international (non-U.S.) developments. Our goals will be to keep members informed of major developments, to provide cross-border participants with a network and to provide a foundation from which the ELLC can develop new practice resources. The ELLC's Executive Leadership team will lead the work of establishing this new Subcommittee; the Subcommittee itself will lead initial planning and execution.

2. *We will Establish a Labor Law Subcommittee.* Over the past decade, the National Labor Relations Board (NLRB) has been active in shaping its governing statute—the National Labor Relations Act (NLRA)—into a powerful tool for workplace reform, both in union and non-union settings. This development has created new challenges for non-union employers and their in-house counsel, who now need to understand the NLRA and the body of administrative law and case law thereunder. The ELLC responded to this need several years ago by establishing an NLRA “Taskforce” to track NLRA developments; with developments continuing and increasing in complexity and scope, the area merits a full subcommittee. The ELLC Executive Leadership team will lead the work of establishing the new Labor Law Subcommittee; the Subcommittee itself will lead its substantive work.

3. *We will Develop and Host “Shared Wisdom” Virtual Events.* Many of our members cannot afford to attend ACC programming in person, either because of time or budget constraints. (Anecdotal reports are that many in-house counsel do not have travel budgets and are not permitted to pay for CLE programming in light of the availability of “free” CLE programming from law firms seeking to market to in-house attorneys.) To reach these members, whose membership presence necessarily is virtual, we will expand our successful Shared Wisdom sessions to a virtual platform. Our goal will be to create a virtual workshop for in-depth discussion and problem-solving. Our Memberships Subcommittee will lead this work.

As with the list of tactics for EMPOWER, this list is not intended to limit our operating tactics, which we may adjust or augment as circumstances warrant.

C. CONNECT

Statement of Goal. We will build upon the ELLC's past efforts to involve our members in ELLC activities and to enable our members to connect with one another on both substantive and professional topics. In addition, we will expand our outreach to other ACC Committees and Chapters and to ACC members who have not joined the ELLC; and we will offer our support to ACC HQ staff, who may call upon us to assist other ACC Committees, Chapters, or members. In short, we will be valuable members of and contributors to the ACC community at large.

Operating Tactics. We will pursue the following tactics to reach our goal:

1. We will Maintain or Increase ELLC's Membership. While we believe the best way to attract and retain members is to provide outstanding services, we also will take steps to attract new members. We especially hope to attract non-U.S. members through our expanded global focus. Our Membership Subcommittee will lead this work.

2. We will Leverage our eGroup Tool More Fully Than In Past Years. The ELLC's eGroup message board has been an active source of member-to-member exchange for many years. We will not interfere with the existing productive eGroup use. We will augment that use by promoting the eGroup in membership communications (including, *e.g.*, our monthly newsletters) and leveraging the eGroup to share and expand upon monthly teleconference discussions and to identify topics for "shared wisdom" sessions and/or Sounding Board discussions. Our Secretary will lead our work to monitor and leverage the eGroup.

3. We Will Survey Our Members. We will survey our members at the beginning of the 2015-2016 operating year and at mid-year to assess what is working, what is not working and what we can do to improve our service. We hope this will become an annual ELLC activity. We will use survey results to develop new programming and improve current services.

4. We will Collaborate with other Committees and with Chapters. We will make deliberate efforts to co-sponsor Annual Meeting programs, Webcasts and other resources and programming. We also will attempt to partner with an ACC Chapter to offer programming and/or resources, which we believe may be of mutual benefit. We will consider the appointment of a Chapter Liaison to coordinate these activities.

5. We will Continue to Involve Members in Committee Programming. The ELLC historically has attempted to include members in unique events (*e.g.*, in-person government agency meetings), in Committee programming and in resource development opportunities. We will continue these efforts. We will, for example, invite members to present Sounding Boards during our Monthly Teleconferences, to host Webcasts, to speak on Annual Meeting panels, to develop *ACC Docket* articles and to participate in special Committee meetings and opportunities.

6. We will Develop future Committee Leaders. It is essential for us to develop the next generation of ELLC leaders. We will do so principally by engaging members in the many ways noted above. We

also will increase the number of Subcommittee leaders in 2015-2016 so that new leaders can begin to play a role in ELLC activities and planning.

As with the prior two lists of tactics, this list is not intended to limit our operating tactics, which we may adjust or augment as circumstances warrant.

APPENDIX B – 2018-19 ELLN LEADERSHIP

Chair	Eric de los Santos	TrueBlue	(253) 680-8483	EDeLosSantos@trueblue.com
Vice Chair	April Goff	JCPenney	(972) 431-2470	Agoff6@jcp.com
Secretary	Doug Hass	Lifeway Foods	(847)-957-1061	douglash@lifeway.net
Imm. Past Chair	Kevin Chapman	Dow Jones & Co.	(609) 520-4106	Kevin.Chapman@dowjones.com
Advoc. Liaison	Greg Watchman	Freddie Mac	(703) 903-3450	Gregory_watchman@freddiemac.com
Absence & Disability Management	Marjory Robertson Renee Grant Bluechel Marti Cardi	Sun Life Financial Zulily Co. Matrix Absence Mgmt.	(781) 446-1575 (206) 388-0927 (303) 917-5025	marjory.robertson@sunlife.com rgrantbluechel@zulily.com Marti.cardi@Matrixcos.com
ERISA	Ron Peppe Mark Burgreen	Canam Steel Corp. Marriott	(301) 874-6215 (301) 380-4070	ron.peppe@canamgroupinc.com Mark.Burgreen@marriott.com
Health & Safety	Linda Jo Carron Elaine Pascua	Hyster-Yale Group TrueBlue	(252) 931-5583 (253) 680-8486	lindajo.carron@hyster-yale.com epascua@trueblue.com
International	Jim Beyer Kevin Reed Janet Tacoronte Chuck Coleman	Infosys, Ltd. TrueBlue Almod Diamonds Ltd Raytheon	(224) 585 -3074 (253) 396-3883 (786) 294-4241 (214) 263-6057	James.beyer01@infosys.com kreed@trueblue.com janetctacoronte@gmail.com Ccoleman@raytheon.com
Labor	Darryl Uffelmann Micah Heilbrun Derek Lipscombe	Anheuser-Busch Companies Phillips 66 Toyota Motor North America	(314) 577-7308 (713) 382-4677 (469) 292-1517	darryl.uffelmann@anheuser-busch.com micah.s.heilbrun@p66.com derek.lipscombe@toyota.com
Policy	Greg Watchman Jennifer Harper Colleen Higgins Schultz Ryan Brown	Freddie Mac DC Water & Sewer Auth. Texas Instruments Rosetta Stone	(703) 903-3450 (202) 787-2641 (214) 479-1171 (703) -387-5919	Gregory_watchman@freddiemac.com Jennifer.Harper@dcwater.com cschultz@ti.com rbrown@rosettastone.com
Communications	Monica Torrez-Pfister Abigail Morrow Cecilia Tran Brad H. Sysol	TrueBlue Automation Personnel Serv. American Bureau of Shipping Summit Pointe	(253) 573-5024 (205) 733-3700 (281) 877-5985 (269) 275-1961	mtorrez@trueblue.com abigailm@apstemp.com ctran@eagle.org bhs@summitpointe.org
Programs	Rachel Barack Michael Booden Marjory Robertson Susan Tahernia Nikki Odom	Clorox R1 RCM Inc. Sun Life Financial 3M Company	(310) 472-2871 847-212-2351 (781) 446-1575 (703) 736-8948 (651) 733-2751	Rachel.barack@clorox.com Boodenm@comcast.net marjory.robertson@sunlife.com Stahernia@aol.com Nodom2@mmm.com
Membership	Carla Ulgen Princeton Kim Erin Hiley	Erickson Living Management Cruise Automation American Specialty Health	(410) 402-2355 (213) 325-0932 (323) 371-5728	carla.ulgen@erickson.com princeton.kim@gmail.com erinh@ashn.com
InfoPaks	Susan Tahernia		(703) 736-8948	Stahernia@aol.com

APPENDIX B – 2018-19 ELLN LEADERSHIP

	Krista Sterken	EXACT Sciences Corp.	(608) 535-8880	ksterken@exactsciences.com
Webcasts	Alexis Pfeiffer Jody Riger Alexandra Bodnar	Sprouts Farmers Markets Sun Chemical Volt Information Services	(602) 682-3185 (973) 404-6580 (714) 921- 7440	AlexisPfeiffer@sprouts.com jody.riger@sunchemical.com abodnar@volt.com
Library/Archives Task Force	Alexis Pfeiffer Judith Villarreal	Sprouts Farmers Markets CorCap Investment	(602) 682-3185 248-784-1339	AlexisPfeiffer@sprouts.com judith.villarreal@corecapinv.com

APPENDIX C – SUCCESSION PLANNING

The Network has a longstanding and effective succession planning process. Each year, subject to the vote of the Network's membership, the Vice-Chair succeeds the Chair, the Secretary succeeds the Vice-Chair and a new Secretary is elected, typically from the ranks of the Sub-Committee leaders.

To facilitate succession into the Officer roles, the Chair, Vice-Chair and Secretary identify candidates for the Secretary role early in the operating year and have ongoing discussions about succession throughout the operation year. Further, the Chair announces the opportunity to serve as Secretary to the Subcommittee leadership in order to inspire others to volunteer for leadership. Once candidates are identified, the Chair, Vice-Chair and/or Secretary speak with candidates to solicit interest. Once interest is confirmed, the Chair, Vice-Chair and Secretary, in consultation with the Immediate Past Chair where desirable, will discuss and agree upon the nomination for the Secretary role.

To facilitate succession within the Officer roles, the Chair invites the Vice-Chair and Secretary to participate in Committee work assigned to the Chair, and the Vice-Chair invites the Secretary to participate in work assigned to the Vice-Chair. The Officers meet monthly by teleconference to discuss Network business in full, affording each Officer full insight into Network governance and operations. The Chair meets separately with the Vice-Chair to prepare the Vice-Chair for Chair duties; the Vice-Chair likewise meets with the Secretary and the Secretary with the incoming Secretary. The Officers invite the ACC Liaison to join these discussions as appropriate.

APPENDIX D – ELLN MEETING AGENDA SAMPLES

(November 2018)

(December 2018)

(March 2019)

(April 2019)

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT
& LABOR LAW NETWORK (ELLN) MONTHLY
TELECONFERENCE**

Wednesday, November 7, 2018 (3:00 – 4:00 pm Eastern Time)

PLEASE NOTE NEW PROTOCOL

Access the meeting by using the following link

<https://global.gotowebinar.com/pjoin/8962489104886177291/5715105703659320834>

Or Dial In at (877) 309-2074; Passcode 889 435 197

PLEASE NOTE THAT LINK WILL CHANGE EVERY MONTH

I. Opening Business

- a. Welcome – April A. Goff, ELLN Vice-Chair (J. C. Penney Corporation, Inc.)
- b. Roll – Doug Hass (Lifeway Foods), Secretary – *please report your attendance to ELLC@accglobal.com if you haven't logged into the webinar.*
- c. Approval of minutes from the annual meeting on October 21, 2018.

II. Announcements and Staff Report (Irene Meroka, ACC)

III. Legal Quick Hit Presented by Jackson Lewis P.C. – OFCCP's New Compensation Directive – What Contractors Need to Know. In August, OFCCP rescinded its controversial Compensation Directive 307 and replaced it with a new directive "Analysis of Contractor Compensation Practices During a Compliance Evaluation." This new directive provides insight into how the Agency will analyze compensation during a compliance review including how it will review data, group employees for analytical purposes, perform statistical analyses and communicate findings with federal contractors. This webinar will provide an overview of the directive and best practices for compliance, and address how the OFCCP compliance can be used as part of a broader internal pay equity compliance process. This segment presented by Stacey Bastone from the Long Island, NY office of Jackson Lewis P.C. will address strategies for keeping legally binding agreements confidential.

IV. Subcommittee Reports

- a. **Policy:** Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone)
- b. **Absence and Disability Management:** Marjory Robertson (Sun Life Financial), Renee Grant Bluechel (Zulily Co.), Marti Cardi (Matrix Absence Management)
- c. **Communications:** Monica Torrez-Pfister (TrueBlue, Inc.), Abigail Morrow (Automation Personnel Services), Cecilia Tran (American Bureau of Shipping), Brad H. Sysol (Summit Point)
- d. **ERISA:** Ron Peppe (Canam Steel Corp.), Mark Burgreen (Marriott)
- e. **Health & Safety:** Alex Giftos (Caterpillar, Inc.), Linda Jo Carron (Hyster-Yale Group), Renee Grant Bluechel (Zulily Co.)
- f. **InfoPaks:** Susan Tahernia, Krista Sterken (EXACT Sciences Corp.)
- g. **International:** Jim Beyer (Infosys), Kevin Reed (TrueBlue)

- h. **Labor:** Darryl Uffelmann (Anheuser-Busch Companies), Micah Heilbrun (Exxon Mobil Corp.)
- i. **Membership:** Carla Ulgen (Erikson LivingManagement), Princeton Kim (Cruise Automation), Erin Hiley (American Specialty Health)
- j. **Programs:** Rachel Barack (Clorox), Michael Booden (R1 RCM Inc.), Marjory Robertson (SunFinancial), Nikki Odom (3M Company)
- k. **Webcasts:** Alexis Pfeiffer (Sprouts Farmers Markets), Jody Riger (SunChemical), Alexandra Bodnar (Volt Information Services)
- l. **Library Archives/Task Force:** Kevin Chapman (Dow Jones & Co.), Alexis Pfeiffer (Sprouts Farmers Markets), Judith Villarreal (CorCap Investments)

VII. New Year Overview – April Goff (ELLN Vice-Chair, J. C. Penney Corporation, Inc.)

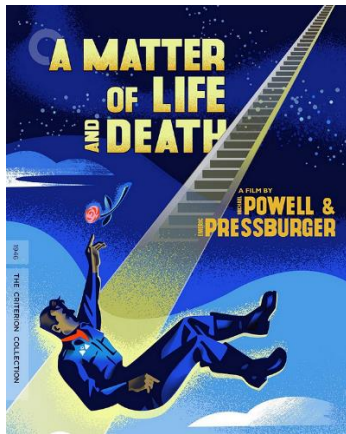
VIII. Other Old/New Business: New Member Comments/Items from the Floor

IX. Next Teleconference – Wednesday December 5, 2018 at 3pm EST

X. Adjourn

Legal Movie Quick Pick: A Matter of Life and Death (1946, 104 min., d. Michael Powell)

Beginning this month, the ELLN will commence a year-long series of cinematic picks that will showcase various films with a legal theme or setting. These may be titles that you have never heard of, but our hope is that your interest will be piqued and your cinematic world enriched!



Criterion has just released one of the most gorgeously shot films of all time on Blu-Ray, Michael Powell’s *A Matter of Life and Death* (1946). This beautiful fantasy tells the story of British pilot Peter Carter (played by David Niven in his best role), whose plane is shot down in WWII and, due to a mix-up in Heaven, survives the crash even though he should not have. When a French angel (a hilarious Marius Goring) is dispatched to retrieve him, he begs to have his supernatural case pleaded since he has now fallen in love with an American radio dispatcher and wants to stay. This leads to an ethereal courtroom scene you must see to believe (dig that Stairway to Heaven!).

This is a definite recommendation for people who say classic films are “staid” or “clunky” – the artistry on display here will make it an eye-opening experience for them. You’ll marvel at the art direction (seriously, it looks like it was filmed yesterday) and enchanted by the imaginative storyline. And note: for those of you captivated by what you’ve seen, check out Powell’s equally stunning *Black Narcissus* (1947) and *The Red Shoes* (1948) – masterpieces in their own right.

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT
& LABOR LAW NETWORK (ELLN) MONTHLY
TELECONFERENCE**

Wednesday, December 5, 2018 (3:00 – 4:00 pm Eastern Time)

NEW MEETING PROTOCOL BELOW

Access the meeting by using the following link

<https://global.gotowebinar.com/pjoin/1678290541550104075/1289228353568485635>

Dial-in

United States (Toll-free): 1 866 952 8437

United States: +1 (213) 929-4221

Access Code: 829-526-923

INTERNATIONAL DIAL-IN NUMBERS: <https://attendee.gotowebinar.com/paudio/1678290541550104075>

THE MEETING LINK AND NUMBER ABOVE WILL CHANGE EVERY MONTH!

I. Opening Business

- a. Welcome – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)
- b. Roll – Doug Hass (Lifeway Foods), Secretary – *please report your attendance to ELLC@accglobal.com if you haven't logged into the webinar.*
- c. Approval of minutes from the previous monthly meeting on November 7, 2018.

II. Announcements and Staff Report – Irene Meroka, ACC

III. Legal Quick Hit Presented by Jackson Lewis P.C. – ICE I-9 Audits and Raids. The Trump Administration has increased government I-9s audits four-fold and brought back worksite raids. High fines and in some cases criminal charges are being brought against companies and company owners/managers. In this quick hit, we will discuss proactive steps you can take to prepare for an ICE I-9 Audit or a worksite raid to minimize the impact on your business. This segment will be presented by Amy Peck from the Omaha, Nebraska office of Jackson Lewis P.C.

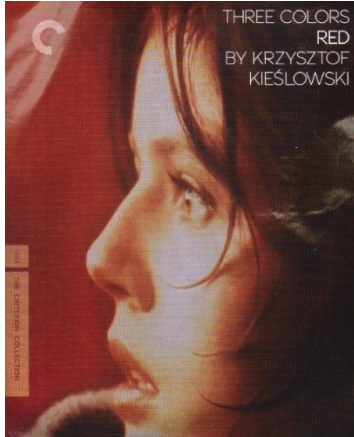
IV. Subcommittee Reports

(italics indicates oral report anticipated, underline indicates written report anticipated, gray indicates no report anticipated)

- a. **Policy:** Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), *Ryan Brown (Rosetta Stone)*
- b. **Absence and Disability Management:** Marjory Robertson (Sun Life Financial), Renee Grant Bluechel (Zulily Co.), *Marti Cardi (Matrix Absence Management)*
- c. **Communications:** *Monica Torrez-Pfister (TrueBlue, Inc.), Abigail Morrow (Automation Personnel Services), Cecilia Tran (American Bureau of Shipping), Brad H. Sysol (Summit Point)*
- d. **ERISA:** Ron Peppe (Canam Steel Corp.), *Mark Burgreen (Marriott)*

- e. **Health & Safety:** Alex Giftos (Caterpillar, Inc.), Linda Jo Carron (Hyster-Yale Group), Renee Grant Bluechel (Zulily Co.)
 - f. **InfoPaks:** Susan Tahernia, Krista Sterken (EXACT Sciences Corp.)
 - g. **International:** Jim Beyer (Infosys), Kevin Reed (TrueBlue), Janet Tacoronte (Selina)
 - h. **Labor:** *Darryl Uffelmann* (Anheuser-Busch Companies), Micah Heilbrun (Exxon Mobil Corp.), Derek Lipscombe (Toyota)
 - i. **Membership:** Carla Ulgen (Erikson LivingManagement), Princeton Kim (Cruise Automation), Erin Hiley (American Specialty Health)
 - j. **Programs:** Rachel Barack (Clorox), Michael Booden (R1 RCM Inc.), Marjory Robertson (SunFinancial), Nikki Odom (3M Company)
 - k. **Webcasts:** *Alexis Pfeiffer* (Sprouts Farmers Markets), Jody Riger (SunChemical), Alexandra Bodnar (Volt Information Services)
 - l. **Library Archives/Task Force:** Kevin Chapman (Dow Jones & Co.), Alexis Pfeiffer (Sprouts Farmers Markets), Judith Villarreal (CorCap Investments)
- V. **eGroup Spotlight** – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)
- VI. **Call for Volunteers, Programming Call Reminder** – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)
- a. Deadline for programming submissions: January 7, 2019
- VII. **Update on LinkedIn Group** – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)
- VIII. **Other Old/New Business** – New Member Comments/Items from the Floor
- IX. **Next Teleconference** – Wednesday, January 2, 2019, 3pm Eastern Time
- X. **Adjourn**
- XI. **Legal Movie Quick Pick - Three Colors: Red (1994, 99 min., d. Krzysztof Kieslowski)**

The ELLN has commenced a year-long series of cinematic picks that will showcase various films with a legal theme or setting. These may be titles that you have never heard of, but our hope is that your interest will be piqued and your cinematic world enriched!



A foreign art house sensation at the time of its release (getting 3 Oscar nominations – Best Director, Screenplay and Cinematography), “Red” tells the story of a Swiss model (the wonderful Irene Jacob) and a retired judge who meet under distressing circumstances and form an unlikely friendship. Complications occur when she discovers that this former “man of the law” is also a cynical voyeur who uses a phone-tapping device to listen in on neighborhood people’s conversations. What begins as disgust turns into compassion as they explore the seemingly random connectedness that ties us to all others.

This sublimely melancholy film is not a “heavy watch” whatsoever. In fact, you’ll be exhilarated by the ideas and the artistry that is brought to this deceptively simple story. It should be noted that this is the final film of a trilogy entitled “Three Colors”, the 1st being “Blue” and the 2nd being “White” – each respectively standing for the colors of the French flag and the ideas of liberty, equality and fraternity. It’s not necessary to see the other two films, but they are masterworks in their own right and give some context to the final scene. Sadly, Kieslowski died shortly before the film’s release, but he left behind an incredible body of work, with this film as his crowning jewel.

ELLN SUBCOMMITTEE REPORTS

December 5, 2018

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW
NETWORK**

December 5, 2018

ERISA Subcommittee Report

Co-Chairs: Mark Burgreen (presenting), Ron Peppe

- The Tax Cuts & Jobs Act (TCJA) made entertainment expenses immediately non-deductible (no transition/phase out).
- Both before and after the TCJA, companies could deduct 50% of business meal expenses.
- In October 2018, the IRS issued Notice 2018-76, which provides interim guidance (which companies can rely on until proposed regulations are issued) on when food & beverage (F&B) expenses constitute non-deductible entertainment v. deductible (50%) business meals. The Notice says companies can take the 50% business meal deduction if:
 - The F&B expense is an ordinary and necessary expense under Code Section 162(a) paid or incurred in carrying on a trade or business;
 - The F&B expense is not lavish or extravagant;
 - The company (or its employee) is present when the F&B is furnished;
 - The F&B is provided to current or potential business customers, clients, consultants or similar business contacts; and
 - If F&B is provided during or at an entertainment activity or event, the F&B is purchased separately from the entertainment or the cost of the F&B is stated separately from the cost of the entertainment on the bill, invoice or receipt.
 - The Notice provided three examples involving attending a sporting event with a business client and having food and drink while at the game. They concluded that tickets for a sporting event were non-deductible entertainment, but that the company could take a 50% business meal deduction for the F&B purchased (hot dogs, sodas, etc.) *if* paid for or itemized separately from the tickets. The example where it wasn't itemized separately involved a luxury party box where F&B was included in the ticket price.
- **Thus, the main takeaway is that companies should continue to document the business purpose of meals, the presence of an employee at the meal, and the fact that the meal was not lavish or excessive, and be sure to obtain separate F&B bills where the meals are part of a larger entertainment activity.**
- Note: the Notice cautioned not to circumvent the entertainment disallowance rule by inflating F&B costs.

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT
& LABOR LAW NETWORK (ELLN) MONTHLY
TELECONFERENCE**

Wednesday, March 6, 2019 (3:00 – 4:00 pm Eastern Time)

NEW MEETING PROTOCOL BELOW
Access the meeting by using the following link

March 2019:

<https://global.gotowebinar.com/pjoin/6475116727459329805/6104907864491250177>

Dial -in: 1 877 309 2074

Passcode: 730-526-956

THE MEETING LINK AND NUMBERS ABOVE WILL CHANGE EVERY MONTH!

I. Opening Business

- a. Welcome – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)
- b. Roll – Doug Hass (Lifeway Foods), Secretary – *please report your attendance to ELLC@accglobal.com if you haven't logged into the webinar.*
 - a. Engagement Statistics:
March 2019 attendance: 83 (#2 among networks)
FY18-19 averages:
Attendees: 75 (#3)
Monthly Forum Posts: 1004 (#2)
Monthly Forum Posts Ratio: 15.61% (#2)
Total Forum Users: 273 (#2)
Total Forum Users Ratio: 4.25% (#3)
- c. Approval of minutes from the previous monthly meeting on February 6, 2019.

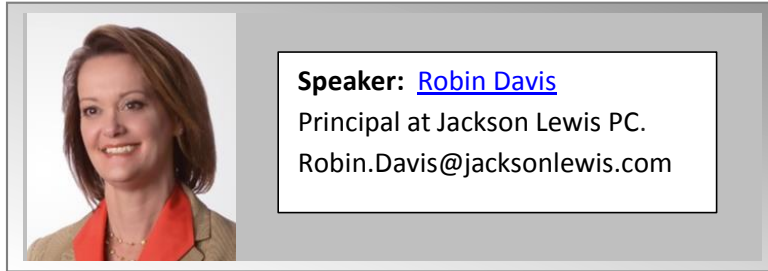
II. Announcements and Staff Report – Irene Meroka, ACC

III. Legal Quick Hit Presented by Jackson Lewis P.C.

Trends in Designing Paid Leave and TRO Programs Title:

[Non-Competes and Restrictive Covenants Under Assault \[acc.inreachce.com\]](#)

Description: President Obama's 2016 "call to action" to reform non-compete laws in the U.S. has spurred a number of state and local legislatures to pass laws significantly limiting employers' utilization of noncompetition restrictions. At the same time, state attorneys general have taken actions of their own, and the U.S. Department of Justice has zeroed in on employee nonsolicitation. Learn what employers need to know and do to stay out of trouble. This segment will be presented by Robin Davis, Principal at Jackson Lewis P.C.



IV. Subcommittee Reports

- a. **Policy:** Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone)
- b. **Absence and Disability Management:** Marjory Robertson (Sun Life Financial), Renee Grant Bluechel (Zulily Co.), Marti Cardi (Matrix Absence Management)
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- f. **InfoPaks:** Krista Sterken (EXACT Sciences Corp.), Susan Tahernia
- g. **International:** Jim Beyer (Infosys), Chuck Coleman (Raytheon), Kevin Reed (TrueBlue), Janet Tacoronte (Selina)
- h. **Labor:** Kevin Chapman (Dow Jones), Micah Heilbrun (Exxon Mobil Corp.), Derek Lipscombe (Toyota), Darryl Uffelmann (Anheuser-Busch Companies)
- i. **Membership:** Erin Hiley (American Specialty Health), Princeton Kim (Cruise Automation), Carla Ulgen (Erikson LivingManagement)
- j. **Programs:** Rachel Barack (Clorox), Michael Booden (R1 RCM Inc.), Marjory Robertson (SunFinancial), Nikki Odom (3M Company), Susan Tahernia
- k. **Webcasts:** Alexandra Bodnar (Volt Information Services), Alexis Pfeiffer (Sprouts Farmers Markets), Jody Riger (SunChemical),
- l. **Library Archives/Task Force:** Alexis Pfeiffer (Sprouts Farmers Markets), Judith Villarreal (CorCap Investments)

V. New-to-In-House Virtual Roundtable Update – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)

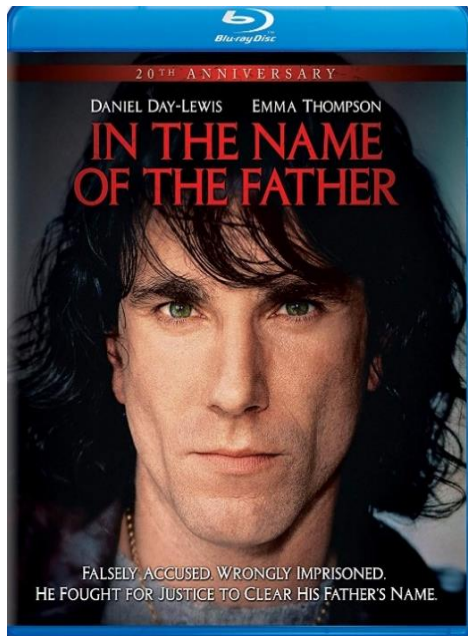
VI. Industry-Focused Programming – April Goff, ELLN Vice-Chair (JCPenney)

VII. Other Old/New Business – New Member Comments/Items from the Floor

VIII. Next Teleconference – Wednesday, April 3, 2019, 3pm (Eastern Time)

IX. Adjourn

X. Legal Movie Quick Pick



March Pick: In the Name of the Father (1993, 133 min., d. Jim Sheridan)

One year after their mainstream breakthrough roles in *Last of the Mohicans* and *Howard's End* respectively, Daniel Day-Lewis and Emma Thompson gave searing Academy Award-nominated performances in master filmmaker Jim Sheridan's powerful dramatization of a true story. This film tells the story of Gerry Conlon, one of the "Guilford 4" who were accused of an IRA pub bombing in 1974. After succumbing to police torture, the young Irishman falsely confesses to the crime and is given a lifetime prison sentence. His father, viewed as a knowing accomplice, is also imprisoned (played by the late Pete Postlethwaite, who was also given an Oscar nomination for his haunting performance).

As an examination of the political hysteria in Britain at this time of terrorism, this film boils over with righteous anger at a legal system that was looking for anyone, whether they met the burden of absolute proof or not, that could be held up for public blame. At its heart though, this social drama contains what may be one of the screen's best examinations of a father-and-son relationship – marred by past grievances but forced to mend when faced with this horrible adversity. It's a riveting watch that, with the final courtroom scene, will hopefully leave you inspired about justice being properly served.

(#188 of the All-Time Top 250 on IMDb; Available on Blu-Ray, DVD & Amazon Prime)

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT
& LABOR LAW NETWORK (ELLN) MONTHLY
TELECONFERENCE**

Wednesday, April 3, 2019 (3:00 – 4:00 pm Eastern Time)

NEW MEETING PROTOCOL BELOW
Access the meeting by using the following link

April 2019:

<https://global.gotowebinar.com/pjoin/6904570576121656075/5309730060167662081>

Dial -in: United States (Toll-free): 1 877 309 2071

United States: +1 (562) 247-8421

Passcode: 884-535-885

THE MEETING LINK AND NUMBERS ABOVE WILL CHANGE EVERY MONTH!

I. Opening Business

- a. Welcome – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)
- b. Roll – Doug Hass (Lifeway Foods), Secretary – *please report your attendance to ELLN@accglobal.com if you haven't logged into the webinar.*
 - a. Engagement Statistics:
 - March 2019 attendance: 83 (#2 among networks)
 - March Virtual Roundtable attendance: 101
 - FY18-19 averages:
 - Attendees: 72 (#5)*
 - Monthly Forum Posts: 1170 (#2)*
 - Monthly Forum Posts Ratio: 15.61% (#2)*
 - Total Forum Users: 294 (#2)*
 - Total Forum Users Ratio: 4.53% (#3)*
- c. Approval of minutes from the previous monthly meeting on March 6, 2019.

II. Announcements and Staff Report – Irene Meroka, ACC

III. Legal Quick Hit Presented by Jackson Lewis P.C. – “Pay Equity”

Everyone is talking about pay and they are doing so publicly. From the U.S. Women’s Soccer team to Marc Benioff, and employees of high profile companies in between, people are concerned about pay. The states, shareholders and class-action attorneys are taking action. Against this rapidly developing, highly publicized and emotionally charged backdrop, the paramount question is whether your company’s pay practices will withstand scrutiny. A close second is the question of whether

you should add your company to the public discussion. Join us to explore potential explanations for, and the defensibility of, your pay decisions as well as the pros and cons of going public.

Speaker: Stephanie Lewis

Stephanie E. Lewis is the Office Managing Principal of the Greenville, South Carolina, office of Jackson Lewis P.C. She is the Co-Chair of the Pay Equity Resource Group.

IV. Subcommittee Reports

- a. **Policy:** Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone)
- b. **Absence and Disability Management:** Marjory Robertson (Sun Life Financial), Renee Grant Bluechel (Zulily Co.), Marti Cardi (Matrix Absence Management)
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V. New-to-In-House Virtual Roundtable Update – Eric de los Santos, ELLN Chair (TrueBlue, Inc.)

VI. Industry-Focused Programming – April Goff, ELLN Vice-Chair (JCPenney)

VII. Other Old/New Business – New Member Comments/Items from the Floor

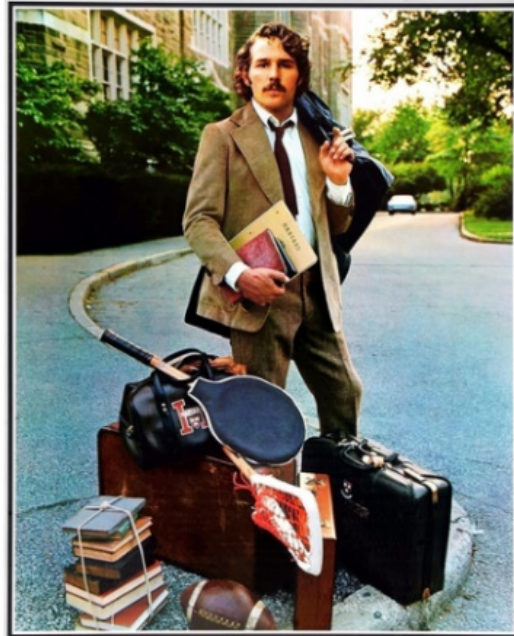
VIII. Next Teleconference – Wednesday, May 2019, 3pm (Eastern Time)

IX. Adjourn

X. Legal Movie Quick Pick

The Paper Chase

You may be looking at
a future President, Supreme Court Justice,
Secretary of State or
a dropout.



With Century-Fox Presents TIMOTHY BOTTOMS • LINDSEY WAGNER • JOHN HOUSEMAN
with THE GARDNER-HOOPS PRODUCTION "THE PAPER CHASE" Produced by ROBERT C. THOMPSON and RODRICK PAUL
Directed by JAMES BRIDGES Screenplay by JAMES BRIDGES Music by JOHN JAY OSSORN, JR.
FOX THEATRE PRESENTS JOHN WILLIAMS COLOR BY DE LUXE

Ahhh...the good ol' days of law school. Do you miss those younger times? Or, does it still cause you to wake up screaming? Either way, why not take a trip down memory lane and take a look at the iconic film that almost assuredly inspired an entire generation to become an attorney – The Paper Chase. Based on the novel by John Jay Osborne, a third-year law student at Harvard University, this polished study of freshman law students and their academic frustrations has long been celebrated for its accuracy and for doing what was considered hereto then impossible – making studying exciting!

First and foremost, this film will always be associated with the towering, magnificent performance of John Houseman as Professor Kingsfield – the teacher from hell that all his students still fight to impress. This was his Oscar-winning role that effectively defined his career, which he reprised on the same-named television show for six acclaimed seasons. Timothy Bottoms, fresh off a terrific performance in The Last Picture Show, makes for an amiable lead and the Bionic Woman herself, Lindsey Wagner, impresses in a rare big screen role. Gordon Willis, perhaps the greatest cinematographer of all time, gives the film a gorgeous autumnal look that practically envelops you with its New England setting. So do yourself a favor – if the only film you associate with law school is Legally Blonde, step up and discover this long admired gem. *(Available on DVD & Amazon Prime)*

ELLN SUBCOMMITTEE REPORTS

April 3, 2019

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

April 3, 2019

POLICY Subcommittee Report

Co-Chairs: Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone)

1. DOL Proposes Increases to FLSA Exemption Salary Thresholds

On March 7, 2019 the U.S. Department of Labor proposed revisions to the salary provisions of the FLSA exemption regulations. The proposal would increase the minimum salary for the administrative, executive and professional exemptions from \$23,660 annually up to \$35,308 – about half as far as the Obama Administration had proposed several years ago. Employers would be permitted to count certain non-discretionary bonuses and incentive payments for up to 10% of this salary requirement.

The proposal also changes the minimum salary required to establish the highly compensated employee exemption – but in this case the proposal goes *farther* than the Obama Administration. The current minimum level of \$100,000 would be increased to \$147,414 – well above the \$134,004 level proposed by the Obama Administration. The public comment period for this proposed rule runs through May 21, 2019.

2. DOL Proposes Simplified FLSA Joint Employer Test

On April 1, 2019 the U.S. Department of Labor proposed a rule to revise and simplify the FLSA definition of “joint employer”, departing from the “*potential control*” focus emphasized by the Obama Administration. The proposed joint employer definition would provide that a company may be a joint employer of an individual if it *actually* exercises authority to i) hire and fire; ii) supervise and control the work schedule or conditions of employment; iii) determine the rate and method of payment; and iv) keep employment records. The proposal includes a set of examples to illustrate how this new four-part test would be applied by the Department. The public will have 60 days to comment on the proposal once it is published in the Federal Register.

3. DOL Proposes Exclusions to Regular Rate Regulations

On March 28, 2019 the DOL announced proposed revisions to the FLSA’s regular rate regulations, which define what types of compensation and benefits must be included in the regular rate for purposes of calculating overtime pay. The proposal generally provides that the following types of compensation will typically be exempt from the regular rate: wellness programs, gym access, payments for unused leave, reimbursed expenses, discretionary bonuses (but look carefully at

how narrowly the Department defines “discretionary”), benefits plans and tuition reimbursement programs. The public comment period will be open until May 28, 2019.

4. EEOC Ordered to Resolve Pay Data Issue By April 3

In early March, a federal judge in the District of Columbia ruled that the EEOC had to proceed with its May 31, 2019 collection of comprehensive employee pay data as part of employers’ EEO-1 report filings, in a lawsuit brought by the National Womens’ Law Center and other groups. Since the ruling, the EEOC has been silent on whether it would compel the production of this data with so little notice since the court ruling. More recently, the judge ordered the EEOC to make public its position by April 3, 2019, so that employers understand what they are required to file come May 31. It is expected that the EEOC will delay the filing of the comprehensive employee pay data so that either employers have more time to prepare the data, or the EEOC has time to change the requirements.

5. New Jersey Bans NDAs in Employment Settlements

On March 18, 2019 New Jersey’s governor signed legislation into law which precludes the use of confidentiality provisions in employment settlements involving discrimination, harassment or retaliation claims. The new law only applies to new agreements entered into after the enactment date.

The new law also precludes employees from waiving their substantive or procedural rights relating to a claim of discrimination, harassment or retaliation. The law, which appears to prohibit arbitration agreements and class action waivers, may well be preempted by the Federal Arbitration Act.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

April 3, 2019

ERISA Subcommittee Report

Co-Chairs: Ron Peppe (Canam Steel Corp.), Mark Burgreen (Marriott)

For-Profit Companies Affiliated with Tax-Exempts Could be Liable for New Section 4960 Excise Tax under Tax Reform

- **Quick Background**

- On December 31, 2018, the IRS issued Notice 2019-09 providing guidance under new section 4960 of the Internal Revenue Code, which was added by the 2017 tax reform law (the Tax Cuts and Jobs Act).
- Section 4960 imposes a 21% excise tax on (i) compensation over \$1M per year and (ii) excess parachute payments, paid to the top-5 highest paid employees of “applicable tax-exempt organizations” (broadly defined to pick up most tax-exempts). The idea was to apply restrictions similar to sections 162(m) and 280G on tax-exempts, but the definitions are somewhat different.
- *162(m)*. Section 162(m) disallows a deduction to public companies for compensation over \$1M/year paid to the CEO, CFO and next 3 highest paid employees (so, typically the top-5 highest paid). Like section 162(m) for public companies, if a an employee is in the top-5 highest paid one year, then they are considered a “covered employee” forever and their compensation could trigger an excise tax forever.
- *280G*. Section 280G disallows a deduction for the company, and imposes on excise tax on the individual, for excess parachute payments, which are payments contingent on a change in control that exceed 3 times the employee’s average compensation for the past 5 years (this average is called the “base amount”). Under section 4960, the payment is an excess parachute payment if contingent on separation (e.g., severance), instead of a change in control. Like section 280G, the 21% excise tax is imposed on the amount in excess of the employee’s base amount.
- For a tax-exempt to determine its top-5 highest paid employees and whether they make enough to trigger an excise tax, they must include amounts paid to the employee by the tax-exempt *AND* any “related organization.” Related organizations can include **for-profit, taxable organizations**.
 - Thus, for each employee of the tax-exempt, you add together the compensation they receive from the tax-exempt **AND from related organizations, including for-profits**. Whether someone is an “employee” of the tax-exempt is determined using the common-law employee test for federal tax purposes.
 - The definition of related organization tracks the Form 990, which the tax-exempts in your company group should be intimately familiar with. It’s a 50% control test, which can be either based on ownership interest or having enough directors/trustees on the board.

- **The Issue**

- Employees that provide services to both a tax-exempt and related for-profit could be deemed a common-law employees of the tax-exempt and one of its top-5 highest paid, making their compensation (which includes compensation paid by the related for-profit) subject to the 21% excise tax to the extent it exceeds \$1M/year (or if any excess parachute payments are made contingent on their separation).
 - If the 21% excise tax is triggered, both the tax-exempt and for-profit entities are liable for their share of it, pro-rata based on compensation paid.
- **Main Takeaways**
 - Many for-profit companies have affiliated tax-exempts, such as credit unions, company foundations, and political action committees. Under section 4960, the for-profit may be “related” to the tax-exempt, either due to the for-profit having more than 50% ownership interest or controlling at least 50% of the non-profit’s board.
 - Most tax-exempt employees aren’t paid enough to trigger an excise tax (i.e., compensation over \$1M/year or separation payments exceeding 3 times their base amount). However, executives of a related for-profit could serve in officer or other leadership roles with the tax-exempt and are at-risk for being considered a top-5 paid employee of the tax-exempt. And once covered, always covered.
 - Still, for most companies it’s not worth doing a full analysis at this point. I recommend the following steps pending further IRS guidance:
 - Identify for-profit employees providing services to any affiliated non-profit, and roughly estimate whether their compensation exceeds \$1M/year or their separation pay could exceed 3 times their compensation.
 - If any employee is close to meeting the compensation thresholds for triggering an excise tax (there may be none):
 - And you’re a public company, subtract amounts that are non-deductible under section 162(m) (i.e., amounts in excess of \$1M/year) as allowed by section 4960(d). This could leave little or no compensation subject to the excise tax, even for your top-paid officers, unless the tax-exempt pays the employee a lot of compensation.
 - Determine whether a “limited service” exception applies. There’s an exception that is designed to deal with someone working for multiple tax-exempts, and it says section 4960 does not apply with respect to compensation earned from a tax-exempt that is less than 10% of the earnings for all of them together. However, if applying the exception means no tax-exempt is covered by section 4960, then you need to pick one, so not too helpful. Open question for the IRS whether a related for-profit employees who provides services to the tax-exempt for no compensation could still be subject to the excise tax under 4960.
 - If it still seems like there’s an issue, engage internal or externs tax expertise to confirm the above, including that the for-profit employee’s “compensation” is over \$1M as defined under section 4960 (which refers to wages under section 3401(a)), and that the person qualifies as a common law employee of the tax-exempt for federal tax purposes.
 - For most companies, the above steps will rule out any immediate impact. But the IRS intends to propose regulations so a lot can change. Until then, take some time to examine your company group more closely, identify which employees or directors could

cause issues, and keep an open line of communication with your credit unions, company foundations, PACs, etc.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

April 3, 2019

Traditional Labor Subcommittee Report

Co-Chairs: Darryl Uffelmann, Derek Lipscombe, Micah Heilbrun, Kevin Chapman

▪ **Board Status Update**

The Board continues to operate with four members, and no replacement for the 2nd Democratic seat has been announced.

▪ **NLRB ISSUES ADVICE MEMORANDUM APPLYING *BOEING* TEST TO COMPANY RULES**

The Board released a series of advice memoranda in March. Two of the memoranda applied the new *Boeing* test to determine if a company rule unlawfully restricts employees' NLRA Section 7 right to engage in protected concerted activity.

• **The Board's Division of Advice applied this standard to four workplace rules at ADT, Inc. ("ADT") as follows:**

- ADT's rule preventing employees from wearing items of apparel "with inappropriate commercial advertising or insignia" was **lawful** because employees would not interpret it to prohibit wearing items with a union logo, which generally violates the NLRA. The rule focused on appropriate and professional attire, which could include clothing with a union insignia.
- A rule instructing workers to "exercise a high degree of caution" when handling sensitive information was upheld as **lawful**. The categories of information included proprietary information, personally identifiable customer or employee information, and HIPAA-related information. The rule was directed at employees who may have access to this sensitive information and the employees would not read the rule to limit organizing rights.
- ADT's rule directing that only designated spokespeople of the company should speak to the media, financial analysts, or investors about the company to avoid sharing information that could be misinterpreted as a company position was considered **lawful**. Employees would not read this rule to block discussion of workplace grievances with the media.
- A rule restricting the use of personal cellphones during non-work time was ruled **unlawful** because the Board has long protected workers right to communicate through non-employer methods during lunch or break periods. However, such a rule during work time would be considered lawful.

- **Another Advice Memorandum examined three work rules of Nuance Transcription Services, Inc. (“Nuance”) as follows:**
 - A Nuance rule requiring workers to cooperate with investigations was found **lawful**. The Memorandum explained that employees would read the rule to mandate cooperation with investigations of workplace misconduct, which is lawful, as opposed to probes into claims of NLRA violations, which is prohibited.
 - A statement in the beginning of the Nuance handbook requiring confidentiality of the contents of the handbook and a separate handbook policy restricting communication of payroll information were both **unlawful** because the NLRA permits discussion of terms and conditions of employment, including compensation.
 - A rule banning non-business use of the Nuance email system was found **unlawful**. The rule banned personal email, even on non-work time, but also permitted some incidental personal use. The Advice Memorandum explained that employers cannot ban non-business use on personal time under *Purple Communications*. And, the permitted incidental use was too vague to cure the violation because it required employees to decide at their own peril which of the conflicting policies to follow.

▪ **NLRB ISSUES ADVICE MEMORANDUM ON SOCIAL MEDIA POST**

- A lineman of North West Rural Electric Cooperative responded to a message in an online community on Facebook called “Linejunk”. The post was made within a section of the forum directed at linemen safety and included other posts related to safety awareness, standards, and accidents. The employee was terminated for airing his “harsh feelings” about the company on Facebook. The company acknowledged that the employee had raised the concerns in the post with management previously, and that a number of coworkers followed the Linejunk page.
 - In no surprise, the Memorandum determined that the posts were protected by Section 7 of the NLRA because they were aimed at mutual aid or protection in that they addressed the lineman’s and his coworkers’ concerns about workplace safety. Furthermore, the posts were concerted because the employee was engaged in a group discussion with other employees. The employer therefore acted **unlawfully** in terminating his employment.

Citations:

<https://www.nlr.gov/news-publications/nlr-memoranda/advice-memos/recently-released-advice-memos> (Case #: ADT, LLC, 21-CA-209339; Nuance Transcription Services, Inc., 28-CA-216065; North West Rural Electric Cooperative, 18-CA-150605)

▪ **NLRB STILL UNDER FIRE FROM CONGRESS REGARDING JOINT-EMPLOYER**

- On March 14, two Democratic members of Congress sent a letter regarding concerns over a report that the NLRB intended to outsource review of public comments received in response to the Notice of Proposed Rulemaking on the joint-employer standard. A little more than a week later, Board Chairman John Ring responded. He stated that he too would be concerned if a private contractor were performing substantive review of the comments, but he said that Congress was “misinformed ... [as] [t]he Board has not outsourced, and will not outsource, the substantive review of the joint-employer rulemaking comments.” Instead, the Board had engaged temporary support on a limited, short-term basis to perform the initial sorting and coding of the nearly 29,000 comments it received. Once that sorting is done, the initial substantive review will be done the Agency’s labor-law professionals to aid the Board in its exercise of its deliberative functions.

▪ **ALJ DECISION ON CONFIDENTIALITY PROVISIONS IN ARBITRATION AGREEMENTS**

- In the most recent decision for a case that has been pending for nearly three years, an ALJ held that a confidentiality provision in a mutual arbitration agreement between Pfizer, Inc. and its employees violated Section 8(a)(1) of the Act. The consolidated unfair labor practice charges (10-CA-175850 and 07-CA-176035) were filed by two Pfizer employees after the company rolled out a new arbitration agreement in March 2016 that included a class-action waiver. In January 2017, the ALJ held that the rollout of the arbitration agreement violated the Act based on the *Murphy Oil* and *D.R. Horton* precedent. However, after the U.S. Supreme Court rejected the Board’s rationale in those cases in the *Epic Systems* case in May 2018, the Board issued a decision in October 2018 dismissing the allegations that Pfizer had violated the Act by imposing the arbitration agreement on employees.
- However, there was one additional issue that survived – whether the arbitration agreement’s confidentiality clause in and of itself violated the Act. The clause required both parties to maintain the confidential nature of the arbitration proceeding and the award, including discovery, submissions to the arbitrator, the hearing and the contents of the arbitrator’s award unless necessary to enforce the award. In light of *Epic Systems* and the Board’s decision in *Boeing* regarding workplace rules, the ALJ requesting new briefing from the parties and the Board GC, which contended that the confidentiality clause on its face was lawful.
- The ALJ again found the confidentiality clause unlawful. The ALJ rejected Pfizer and the Board GC’s contention that he could not rule on the confidentiality clause because it was part of an arbitration agreement. “Just as there is a difference between playing baseball and talking about a baseball game, arbitration and employee discussion *about* arbitration are two different things,” the ALJ wrote (emphasis in original). The ALJ held that the arbitration system that Pfizer adopted is a condition of employment, and as such, its employees have a legal right to discuss it under Section 7.

Citations:

<https://www.nlrb.gov/cases-decisions/decisions/administrative-law-judge-decisions> (Pfizer, Inc., JD-30-19, March 21, 2019)

▪ **DOL ISSUES PROPOSED RULE FOR JOINT EMPLOYER REGULATION**

- On April 1, 2019, the Department of Labor announced a proposed rule to revise the joint employer regulations under the FLSA. If implemented, this would be the first meaning revision to the applicable regulations in more than 60 years.
- Under the current regulations, several entities may be the joint employers of a single employee as long as they are “not completely disassociated” with respect to the employment of the employee. These joint employers are then jointly and severally liable for the employee’s wages. The current joint employer rule contemplates two different joint employment scenarios: (1) where an employee’s hours work for one employer simultaneously benefits another employers; and (2) where the employee works separate sets of hours for different employers in the same workweek.
- In 2016, the DOL under the Obama administration issued an Administrator Interpretation (“AI”) in which it adopted an expansive “economics realities” test to assess joint employer status. This test heavily favored the finding of joint employment status. The Trump DOL withdrew the AI in June 2017, and stated it would be seeing to revise the joint employer rule.
- The DOL proposes a clear, four-factor test - based on well-established precedent - that would consider whether the potential joint employer actually exercises the power to:
 - Hire or fire the employee;
 - Supervise and control the employee's work schedules or conditions of employment;
 - Determine the employee's rate and method of payment; and
 - Maintain the employee's employment records.
- There will be a 60-day comment period following publication of the Notice of Proposed Rulemaking in the Federal Register. Comments can be submitted electronically. Once the comment period has closed, the DOL will take some time to consider the comments and then issue the final rule.
- Even if the regulations are changed, employers will still be subject to a variety of joint employer standards across the country. For example, the Fourth Circuit in January 2015 announced a new and expansive joint employment status test in *Salinas v. Commercial Interiors, Inc.* California and New Jersey have also established new standards that make it easier to find joint employment. Moreover, the joint employer standards differ under various federal laws, such as the NLRA and anti-discrimination laws, and state laws.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

April 3, 2019

Membership Subcommittee Report

Co-Chairs: Carla Ulgen (presenting), Princeton Kim, Erin Hiley

Membership Sub-Committee Report

1. The announcement for the 2019 mentorship program was posted on our Egroup page on February 22nd and a reminder was posted to Egroup yesterday. We will work to match mentees and mentors before end of April. Thanks to all who have signed up already.
2. Plans for the membership survey are developing. We are still working on plan to reach out to and engage with other corporate counsel groups such as industry corporate counsel groups or minority corporate counsel groups to let them know about opportunities in our network.

APPENDIX E – ELLN MEETING MEETING MINUTES SAMPLES

(November 2018)

(January 2019)

(March 2019)

(May 2019)

**ASSOCIATION OF CORPORATE COUNSEL
EMPLOYMENT & LABOR LAW NETWORK (ELLN)**

**MONTHLY TELECONFERENCE Wednesday, November 7, 2018
(3:00 – 4:00 pm Eastern Time)
MINUTES**

The Employment and Labor Law Network (“ELLN”) held its Monthly Teleconference on November 7, 2018.

I. Opening Business

a. **Welcome and Roll.** Network Vice Chair April Goff (JCPenney) called the meeting to order at approximately 3:00 p.m. ET and welcomed all participants. Meeting attendees were asked to confirm their attendance either by registering for the Web presentation and/or by sending an e-mail to ellc@accglobal.com or elln@accglobal.com.

b. **Approval of Minutes.** The Annual Meeting minutes were posted to the eGroup and the committee webpage. April asked for a motion to approve the minutes of the October 2018 Annual Meeting and Teleconference. Hearing no objections to the minutes as prepared, April confirmed approval of the October meeting minutes.

II. Announcements and Staff Report

Irene Meroka reported on behalf of ACC and made the following announcements:

- The deadline is November 8, 2018 for participating in ACC’s annual CLO survey for all member legal department heads. Survey participants receive the global compensation survey and a copy of the CLO survey.
- ACC is about to launch its new website and will be looking for assistance from members to review resources prior to posting on the new website. Members who are interested in helping with the review project can e-mail legalresources@acc.com.
- March 4-7, 2019 is the next ACC In-House Certification course in Dubai and registration is now open. Registering by January 18 entitles registrants to an early bird rate.
- The nomination period for the 2019 Top 10 30-Somethings is now open. Attorneys must be between the ages of 30 and 39 on December 31, 2018 and show outstanding achievement in their profession. Nominations are due by December 7.

April reminded members that ACC is beginning to put together the plan for annual programming, including for the 2019 annual meeting. She encouraged members to submit program ideas to the network at ellc@accglobal.com or by contacting one of the executive leaders (Eric, April, or Doug).

III. Legal Quick Hit Presented by Jackson Lewis, P.C.: OFCCP’s New Compensation Directive – What Contractors Need to Know

Jackson Lewis’ Stacey Bastone, Principal in the Long Island, NY office, presented on the OFCCP’s recent decision to rescind its controversial Compensation Directive 307 and replace it with a new directive “Analysis of Contractor Compensation Practices During a Compliance Evaluation.” The new directive

provides insight into how the Agency will analyze compensation during a compliance review including how it will review data, group employees for analytical purposes, perform statistical analyses and communicate findings with federal contractors. Stacey provided an overview of the directive and best practices for compliance, and addressed how OFCCP compliance can be used as part of a broader internal pay equity compliance process.

The presentation slides can be accessed via the ACC ELLN website.

Stacey Bastone can be contacted via email at Stacey.Bastone@jacksonlewis.com or by phone at (631) 247-0404.

IV. Subcommittee Reports

- a. **Policy:** Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments) (presenting), Ryan Brown (Rosetta Stone). Colleen presented the Subcommittee's report. Details are included in the attached report.
- b. **ERISA:** Ron Peppe (Canam Steel Corp.), Mark Burgreen (Marriott) (presenting). Mark presented the Subcommittee's report. Details are included in the attached report.
- c. **Library/Archives Task Force:** Kevin Chapman (Dow Jones & Co.) (presenting), Alexis Pfeiffer (Sprouts Farmers Markets), Judith Villarreal (CorCap Investments). Kevin discussed that ACC is beginning to compile a list of resources from the current website that Network members will need to review to ensure that the resources are relevant and current. This will happen over the next few months and the Task Force will be reaching out to Network members and Subcommittees over the next few months.
- d. **Communications:** Monica Torrez-Pfister (TrueBlue, Inc.) (presenting), Abigail Morrow (Automation Personnel Services), Cecilia Tran (American Bureau of Shipping), Brad H. Sysol (Summit Point). The Subcommittee provided the attached written report.

V. 2018-2019 ELLN Goals & Objectives.

On behalf of the ELLN executive team, April presented an overview of the team's four primary goals for the upcoming Network year. First, the Network seeks to grow its membership through outreach to other in-house counsel and, in particular, to both national and local/regional minority bar associations. The Network will develop a process to strive for diversity on speaking panels and create at least one program submission with a diversity and inclusion emphasis. Second, the Network looks to increase membership engage through opportunities such as creating a LinkedIn group, updating the newsletter and including items like a monthly meeting movie recommendation that encourages members to read the monthly agenda. Third, the Network intends to create a diversity of volunteer opportunities for the membership, as no volunteer contribution is too small. The Network intends to find more opportunities to identify volunteers and to recognize their contributions. Fourth, the Network intends to improve engagement and opportunities for interaction among the membership through additional outreach and programs. In particular, the Network intends to conduct

outreach to international members and general practitioners to understand how the Network can serve them. The Network will look to conduct roundtables on employment and labor issues with both groups, and to find additional opportunities to partner with local chapters on programs and events.

VI. Other Old/New Business/Items from the Floor.

None.

VII. Next Teleconference: Wednesday, December 5, 2018, at 3 p.m. ET.

VIII. Adjournment.

There being no further business, the meeting adjourned at approximately 3:55 p.m. ET.

Respectfully Submitted,

Douglas A. Hass
Secretary

ELLN ATTENDANCE

November 7, 2018

Last Name	First Name	Email Address	Company
Acevedo	Katie	katie.acevedo@sephora.com	Sephora
Alvey	Stacey	stacey.alvey@huntington.com	Huntington National Bank
Angelich	Celeste	ccangelich@gmail.com	Impreva
Aquino	Frank	faquino@eaest.com	EA Engineering
Ashburner	Laura Catherine	lashburner@ebSCO.com	EBSCO Information Services
Barbosa	Eric	ebarbosa@pcsi.org	PCSI - Professional Contract Services, Inc.
Barker	J.	cbarker@crassoc.com	CRA Associates
Beard	Lori	l.beard@sagedining.com	SAGE Dining Services
Bedell	Beth	bbedell@ti.com	Texas Instruments
Bozkaya	Terri	terribozkaya@gmail.com	Greyrock Group
Burton	Cheryl	chburton@extremenetworks.com	Extreme Networks
Cavaluzzi	Gerard	JerryCavaluzzi@kennedyjenks.com	Kennedy/Jenks Consultants
Caven	Cayman	cayman.caven@ram-tool.com	RAM Tool Construction Supply Company
Comeaux	David	david.comeaux@mckesson.com	McKesson Corporation
Conte	Michele	mconte@amerisourcebergen.com	Amerisourcebergen
Cooper	Steven	steven.cooper@sandisk.com	SanDisk
Davis	Robyn	rdavis@captechconsulting.com	CapTech Ventures
DeLorenz	Don	don.delorenz@conduent.com	Conduent
Delahunty	Maryrose	mdelahunty@invocon.com	Invocon Inc
Depew	Jacqueline	jacqueline.depew@iridium.com	Iridium Communications
Devitt	H. William	bdevitt@valleynationalbank.com	Valley National Bank

Dietzen	Alicia	aliciad@knowbe4.com	KnowBe4, Inc.
Duggan	Mary Fontana	mfontanaduggan@sbcglobal.net	SBC Global Services
Elloie West	Christian	christianwest@deloitte.com	Deloitte
Erkilla	Jack	jack.erkilla@omf.com	OneMain Financial
Fegan	Jessica	jessica.fegan@jhuapl.edu	John Hopkins Applied Physics Laboratory
Gehman	Andrea	andrea.gehman@jhuapl.edu	John Hopkins Applied Physics Laboratory
Gorin	Heather	heather.gorin@danfoss.com	Danfoss
Halbo	Shannel	shalbo@ymca.org	YMCA
Hughes	Marisol	marisol.hughes@wilsonhcg.com	Wilson Human Capital Group, Inc.
Kendall	Edward	ekendall@aar.org	AAR Corp
Killion	David	dkillion@shookandfletcher.com	Shook and Fletcher Insulation
Kirkeide	Jane	jane.kirkeide@voith.com	Voith
Kolatis	Barbie	barbara.kolatis@remasonco.com	RE Mason Company
Lanier	Pamela	planier@asbellcompanies.com	Asbell Companies
Lattimore	Noelle	noelle@knowbe4.com	KnowBe4, Inc.
LeBlanc	Kimberly	kimberly.leblancross@redcross.org	American Red Cross
Loy	Nilufer	Nil_Loy@abtassoc.com	ABT Associates Inc.
Margolin	Scott	scott.margolin@zeiss.com	Carl Zeiss AG
McGuire	John	jrmcguire03@gmail.com	Medix
Min	Sueyoung	smin@analysisgroup.com	Analysis Group
Moe	Eric	eric@moefamily.com	Inchcape Shipping Services
Ouellet	Jessie	jouellet@selectgroup.com	The Select Group
Page-Iverson	Kristin	kpage-iverson@tep.com	Tuscon Electric Power
Pence	Brenda	brenda.pence@siemensgamesa.com	Siemens Gamesa Renewable Energy

Remillard	L. J.	Bud.Remillard@JWU.edu	Johnson & Wales University
Rolf	Rachel	rrolf@trinity.edu	Trinity University
Ross	Michele	mross@knowbe4.com	KnowBe4, Inc.
Royston	Robert	robert.royston@childrensal.org	Children's of Alabama
Senzel	Alyssa	alyssa.senzel@blackboard.com	Blackboard
Shore	Beth	Beth.Shore@wpsic.com	Wisconsin Physicians Service
Strunk	Dan	dstrunk@gmail.com	Calumet Specialty Products Partners, L.P.
Teffeteller	Robert	rgtesq@gmail.com	Burst Biologics
Tran	Cecilia	ctran@eagle.org	American Bureau of Shipping (ABS)
Wright	Gracie	gcwright@ibm.com	IBM

ELLN SUBCOMMITTEE REPORTS

November 7, 2018

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

November 7, 2018

ERISA Subcommittee Report

Co-Chairs: Mark Burgreen (presenting), Ron Peppe

- ***Sellers v. Minerals Technology, Inc.*, 2018 WL 5099611 (5th Cir., Oct. 18, 2018) (Per Curiam)**
 - Facts
 - In January 2010, CETCO Energy Services hired David Sellers as a VP of Business Development, and entered into an employment agreement with him.
 - The employment agreement provided for a cash incentive of 5% of net profit margin attributable to certain sales made under his supervision from January 18, 2010 to March 15, 2016, subject to Sellers' continued employment through January 18, 2015 (the end of his employment agreement's term).
 - The employment agreement also provided that CETCO must give 30 days' prior written notice to terminate Sellers without cause, and must pay Sellers' his compensation (including the cash incentive) until the termination is effective.
 - In May 2014, Mineral Technologies acquired CETCO, and Sellers was terminated immediately prior to January 18, 2015.
 - Sellers sued for his cash incentive, which was worth about \$425,000.
 - Holding
 - The court found that that a lump-sum amount paid to Sellers on January 15, 2015 was meant to cover future wages through February 14, 2015. And because the employment agreement said Sellers must be paid his compensation through the effective date of termination, the court deemed February 14, 2015, to be the effective date.
 - Accordingly, Sellers was employed on January 18, 2015, and was entitled to his cash incentive.
 - **Important Dicta**
 - "Even if the condition precedent was not technically met here, however, we find it appropriate under the circumstances of this case to deem the condition fulfilled or excuse its fulfillment. Under Texas jurisprudence, if one party prevents another from performing a condition precedent or renders it fulfillment impossible, then the condition may be considered fulfilled. Here, if Defendants effectively terminated Seller's employment in December 2014 (as opposed to in February 2015), as they suggest, then they unilaterally prevented fulfillment of the condition at issue and cannot rely on nonfulfillment to deny the [cash incentive] otherwise contractually due to Sellers."
 - **Takeaways**
 - The dicta suggests that a cash/stock incentive award's service-based vesting schedule can be deemed satisfied when an employer frustrates fulfillment of the service requirement by terminating the employee without cause.
 - This seems wrong on cold contract grounds, but the case is a reminder that bad facts (like terminations close to vesting dates) can cause a court to rely on equitable principles to get to the desired outcome.

- So be careful about terminating employees near vesting events, and consider addressing the award in a separation agreement to avoid a future dispute.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

November 7, 2018

Policy Subcommittee Report

Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments) (presenting), Ryan Brown (Rosetta Stone).

1. New #MeToo Laws in California

On September 30, Governor Brown signed the Stand Together Against Non-Disclosure Act into law, which prohibits settlement agreement provisions that prevent disclosure of factual information related to a claim filed in a civil action or complaint filed in an administrative action regarding sexual assault, sexual harassment, sex discrimination or related retaliation. Another new California law specifies that a single incident of harassing conduct may create a hostile work environment, indicates summary judgment is rarely appropriate for harassment claims, and expands liability for harassment committed by nonemployees. Governor Brown also signed a bill into law that requires California employers with five or more employees to provide interactive sexual harassment training to both supervisory and nonsupervisory employees by January 1, 2020, and to retrain them once every two years.

2. NLRB Issues Proposed Joint Employment Regulations

On September 10, the National Labor Relations Board issued a proposed rule to replace the *Browning-Ferris* standard for joint employer liability and establish that a joint employer “must possess and actually exercise substantial direct and immediate control over the essential terms and conditions of another company’s employees in a manner that is not limited and routine.” The comment period for this rule was recently extended until December 13, 2018. The ELLC is looking for opportunities to sign on to comments in favor of this rule, but is awaiting ACC board approval.

3. DOL Will Propose New Overtime Rule in March

In its fall regulatory agenda announcement, the Department of Labor indicated that it would propose new regulations governing overtime exemptions from the Fair Labor Standards Act in March 2019. The DOL conducted six listening sessions in September and October to understand views concerning potential revisions to the white collar exemptions.

4. Michigan Enacts Paid Sick Leave Law

On September 5, Michigan’s legislature passed a paid sick leave law that otherwise would have appeared on the November ballot as a voter initiative. Accrual will be at a rate of one hour of leave for every 30 hours worked, with an annual accrual and usage cap of 72 hours of paid sick time for businesses with 10 or more employees, but no accrual cap or carryover limit. The law will take effect 90 days after Michigan’s current legislative session ends, currently estimated to be on or about April 1, 2019.

5. OSHA Provides Updated Guidance on Safety Incentive Programs and Post-Incident Drug and Alcohol Testing

On October 11, the Occupational Safety and Health Administration issued a new Standard Interpretation Memorandum clarifying its position that the 2016 regulations on safety incentive programs and post-incident testing do not prohibit these practices. OSHA indicated that rate-based incentive programs that

reward employees based on a lack of injuries are permissible if adequate precautions have been taken to ensure that employees feel free to report an injury or illness, such as rewards for identifying unsafe conditions, training to reinforce non-retaliation for reporting, and a mechanism to evaluate willingness to report. OSHA additionally noted that drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees is permitted without further reasonable suspicion of being under the influence, so long as all employees are tested whose conduct could have contributed to the incident, not just employees who reported injuries.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

November 7, 2018

Communications Subcommittee Report

Co-Chairs: Monica Torrez-Pfister (TrueBlue, Inc.) (presenting), Abigail Morrow (Automation Personnel Services), Cecilia Tran (American Bureau of Shipping), Brad H. Sysol (Summit Point).

- The Subcommittee will have another newsletter coming out before the end of the year that will feature some moments from the ACC annual meeting. Keep an eye out for that newsletter around the beginning of December.
- Members should reach out to the Communications Subcommittee if they have an interest in serving on the Subcommittee.
- The Subcommittee hopes to make progress in 2019 with utilizing social media and making our Network communications/newsletter more accessible and useful for the various employment and labor issues that we face each day.

**MINUTES OF THE
ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT
& LABOR LAW NETWORK (ELLN) MONTHLY
TELECONFERENCE**

The Employment and Labor Law Network (“ELLN”) held its Monthly Teleconference on Wednesday, January 9, 2019.

I. Opening Business

- a. Welcome – Network Chair Eric de los Santos (TrueBlue, Inc.) called the meeting to order at approximately 3:00 p.m. ET and welcomed all participants with an overview of the Network’s goals for the year. Eric asked attendees to confirm their attendance either by logging into the Web presentation and/or by sending an e-mail to ellc@accglobal.com or elln@accglobal.com.
- b. December’s Meeting minutes were posted to the eGroup. Eric asked for a motion to approve the minutes of the November 2018 Teleconference. Hearing no objections to the minutes as prepared, Eric confirmed approval of the December meeting minutes.

II. Announcements and Staff Report

Irene Meroka reported on behalf of ACC and made the following announcements:

- Most ACC memberships expire in December. Please remember to renew if you have not already done so!
- ACC is about to launch its new website in the next few weeks and will be looking for assistance from members to review resources for completeness, relevancy, etc. prior to posting on the new website. Members who are interested in helping with the review project can e-mail legalresources@acc.com.
- ACC’s Asia-Pacific 2019 Annual Meeting will take place on April 11 in Hong Kong. This is a one-day event, and the inaugural version of this meeting. Information on the meeting is available at <https://www.hkcca.net/event-3014424>.
- 2019 Value champion award nominations are also open. Nomination forms on the ACC website and are due by January 31.
- Registration is open for the 2019 Xchange program in April 28-30, 2019 in Minneapolis. Early bird rates are available through January 16. For more details and to register, see the ACC website at <https://www.acc.com/education/x19/index.cfm>.

III. Legal Quick Hit Presented by Jackson Lewis P.C. – ICE I-9 Audits and Raids. Monica Khetarpal, Principal, of the Chicago office of Jackson Lewis P.C reviewed the most notable labor and employment developments in 2018 and look ahead to the anticipated trends for 2019, including key developments regarding paid sick leave and what to expect from the National Labor Relations Board, Equal Employment Opportunity Commission and the U.S. Department of Labor.

The presentation slides can be accessed via the ACC ELLN website.

Monica Khetarpal can be contacted via e-mail at Monica.Khetarpal@jacksonlewis.com or by phone at (312) 803-2529.

IV. Subcommittee Reports

The following Subcommittees presented reports.

Policy: Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone). Jennifer presented the Subcommittee's report. Additional details are included in the attached written report.

Communications: Monica Torrez-Pfister (TrueBlue, Inc.), Abigail Morrow (Automation Personnel Services), Cecilia Tran (American Bureau of Shipping), Brad H. Sysol (Summit Point). Monica presented the Subcommittee's report and discussed how the proposed LinkedIn ACC ELLN group will operate. Additional details are included in the attached written report.

ERISA: Ron Peppe (Canam Steel Corp.), Mark Burgreen (Marriott). Mark presented the Subcommittee's report. Additional details are included in the attached written report.

Labor: Darryl Uffelmann (Anheuser-Busch Companies), Micah Heilbrun (Exxon Mobil Corp.), Derek Lipscombe (Toyota). Derek presented the Subcommittee's report. Additional details are included in the attached written report.

Membership: Carla Ulgen (Erikson LivingManagement), Princeton Kim (Cruise Automation), Erin Hiley (American Specialty Health). Carla presented the Subcommittee's report. Additional details are included in the attached written report.

Programs: Rachel Barack (Clorox), Michael Booden (R1 RCM Inc.), Marjory Robertson (SunFinancial), Nikki Odom (3M Company). Marjory presented the Subcommittee's report. Additional details are included in the attached written report.

V. eGroup Spotlight

Renee Grant Bluechel (Zulily Co.) moderated a discussion from the eGroups about whether exempt employees who overuse their PTO allotment should have this deducted from their pay. Members discussed different views on the topic and the importance of consulting local and state laws before making any deductions. (Thank you to ACC Member Allison Brantley for the topic!)

VI. Industry-Focused Programming – April Goff, ELLN Vice-Chair (JCPenney). April discussed the opportunity to conduct industry-specific webinars for in-house attorneys that practice in specific industries and asked members to consider whether they would be interested in building connections and fostering interaction in this way.

VII. Call for Volunteers Reminder – Eric de los Santos, ELLN Chair (TrueBlue, Inc.). Eric discussed opportunities for volunteers and for outreach to new members.

VIII. Other Old/New Business – None

IX. Next Teleconference – Wednesday, February 6, 2019, 3pm Eastern Time

X. Adjourn

There being no further business, the meeting adjourned at approximately 3:57 p.m. ET.

Respectfully Submitted,

Douglas A. Hass
Secretary

ELLN ATTENDANCE

January 9, 2019

First Name	Last Name	Email Address	Company
Melissa	Alexander	mcawyer@gmail.com	Dell SonicWall
Joanna	Aman	jaman@suddath.com	The Suddath Companies
Faith	Anderson	faith.anderson@aacreditunion.org	American Airlines Federal Credit Union
Jeanine	Anderson	jeanineanderson@neuroleadership.com	NeuroLeadership Institute, Inc.
Rajita	Andrews	r.andrews@blrholdingsinc.com	BLR Holdings, Inc.
Christine	Anselmo Binotti	cmanselmo@gmail.com	Motorola Solutions, Inc.
Tyree	Ayers	tyree.ayers@erickson.com	Erickson
Jake	Baldwin	jbaldwin@mbo.net	MBO
Crystal	Barnes	crystal.barnes@lmco.com	LMCO
Beth	Bedell	bbedell@ti.com	Texas Instrument
Johnnie	Bocanegra	Johnnie.Bocanegra@us.fujitsu.com	Fujitsu
Alexandra	Bodnar	abodnar@voltage.com	Volt
Marie	Boyle	marie.m.boyle@gmail.com	In Transition
Irina	Brault	irina.brault@nordicwi.com	Nordic Consulting Partners, Inc.
Hannah	Breshin	hannah.breshin@caci.com	CACI
John	Bridges	jbridges@arrayasolutions.com	Arraya Solutions, Inc.
Patrice	Brown	patrice.brown@yrcw.com	YRC Worldwide Inc.
Gina	Casias	gmcasias@gmail.com	In Transition
Amanda	Chafin	achafin@cocacolaflorida.com	Coca Cola
Kevin	Chapman	kevin.chapman@dowjones.com	Dow Jones
Christina	Cimini	ccimini@dssinc.com	DSS Inc
Kara	Cleary	kara.cleary@bluelinxco.com	BlueLinx Corporation
Maryrose	Delahunty	mdelahunty@invocon.com	Invocon
Scott	Depta	scott.depta@versummaterials.com	Versum Materials
H. William	Devitt	bdevitt@valley.com	Valley
Sonya	Diaz	Sonya.Diaz@jax.ufl.edu	SBC Global
Mary Fontana	Duggan	mfontanaduggan@sbcglobal.net	SBC Global
Karen	Duke	kduke@aosmith.com	Aosmith
Mustafa	El-Farra	mustafa.elfarra@advantagesolutions.net	Advantage Solutions
Taryn	Filo	taryn.filo@macys.com	Macys
Joseph	Fitzpatrick	joe.fitzpatrick@legal.cbn.org	CBN
Robert	Fleischacker	rfleischacker@gmail.com	Root Level Technology
Sergio	Florez	sflorez@superioruniformgroup.com	Superior Uniform Group Inc.
Ayana	Free	ayana.free@zocdoc.com	Zoc Doc

Amy	Gallent	amygallent@gmail.com	Catalina US Insurance Services
Gene	Gardner	gene.gardner@morganwhite.com	Morgan White
Andrea	Gehman	andrea.gehman@jhuapl.edu	The John Hopkins University Applied Physics Laboratory
Debra	Harris	Debra.Harris@matrixcos.com	Matrix Absence Management
Theodore	Hilke	thilke@njm.com	NJM
Craig	Hirneisen	craig.hirneisen@enersys.com	EnerSys
Rebecca	Hirschklau	rebecca.hirschklau@aspca.org	CM Foods
Robert	Holladay	rholladay@cmfoods.com	CM Foods
Maureen	Hopbell	maureen.hopbell@fedex.com	Fedex
Christina	Hutfless	chris.hutfless@lifespacecommunities.com	Life Space Communities
La Tanya	James-Rouse	latanya.james-rouse@shrm.org	SHRM
Crystal	Jones	cjones@alfasigmausa.com	Alfa Sigma US
Stephen	Jung	stephenjung@sunssc.com	Hair Zone
Soo	Kang	soo.kang@zasio.com	Zasio
Jamie	Kauther	jamie.kauther@sgws.com	Souther Glazer's Wine & Spirits
Deborah	Kelly McGowan	deborah.mcgowan@us.ebarrette.com	Barrette Outdoor Living
Edward	Kendall	ekendall@aar.org	AAR
Corinne	Kevorkian	kevorkianc@whitsons.com	Whitsons
David	Kight	david.kight@garmin.com	Garmin
Michael	Kim	michaelkim@parisbaguette.com	Paris Baguette
Trent	Kirk	trentkirk@invue.com	Invue
Abigail	Kofman	abigail.kofman@officedepot.com	Office Depot
Patrick	Langston	ryan.langston@goosehead.com	Goosehead
Kate	Lawrence	klawrence@berrydunn.com	Berry Dunn
Kimberly	LeBlanc	kimberly.leblancross@redcross.org	Redcross
Joshua	Lee	joshua.lee@hankkooktireusa.com	Hank Kook Tires USA
Sebastian	Lemos	slemos@dssinc.com	Document Storage System Inc
Dickson	Leung	dixonl2010@gmail.com	Healthea
Michael	Leventhal	michael.leventhal@sodexo.com	Sodexo
Daisy	Li-Brum	daisy.li-brum@tristargroup.net	Tristar Insurance
Anna Linda	Marciano	anna.marciano@waters.nestle.com	Nestle
Janet	Mark	janet.mark@hallmark.com	Hallmark
Jennifer	Marshall	jmarshall@amrivers.org	American Rivers
Dana	McDonald	dmcdonald@underarmour.com	Under Armour Inc
Jodee	McGrath	vacelticsun@gmail.com	Chronos Solutiosn
Abigail	Morrow	abigailm@apstemp.com	Automation Personnel Services Inc.
Arnold	Morse	Arnold.Morse@cns-inc.com	CNS Inc
Matthew	Mulroy	mulroy_m@willis.com	Willis

Janene	Murtha	janenemurtha@gmail.com	MGC
Jessica	Nguyen	jessica.nguyen@dermalogica.com	Dermalogica
Thi	Nguyen-Southern	thi@american.edu	American University
Jamie	O'Grady	jamie.ogray@channeladvisor.com	Channel Advisors
John	Okray	jokray@solovis.com	Solovis
Alex	P	alex.paul@yahoo.com	PlanetOut Inc
Elaine	Pascua	Epascua@trueblue.com	True Blue
Brenda	Pence	brenda.pence@siemensgamesa.com	Siemens Games
Jennifer	Rafferty	jrafferty@titanamerica.com	Titan America
Blair	Rawls	blair.rawls@jacobs.com	Jacobs
Teri	Robins	trobins@acgme.org	ACGME
Rosetta	Robins	rrobins@smsolutionskc.com	SM Solutions Inc.
Jacqueline	Rodriguez	jrodriguez@camdenhealth.org	Camden Health
Campbell	Roseman	campbell.roseman@fphcare.com	FPH Care
Brittany	Sakata	bsakata@americanstaffing.net	American Staffing
Matashi	Sakota	msakota@globaladvancedmetals.com	Global Advanced Metals
Kristen	Sampo	kristen.sampo@officedepot.com	Office Depot
Rachel	Sankey	rachel.sankey@veritivcorp.com	Veritiv Corp
Kimberly	Sarff	sarff_kimberly_a@cat.com	Caterpillar Inc
Shuba	Satyaprasad	s.satyaprasad@lek.com	Lek
Emily	Schmitt	eschmitt@sukup.com	Sukup
Natalie	Scott	natalie.scott@parkerdrilling.com	Parker Drilling
Gloria	Sefton	gsefton@acufocus.com	ACU Focus
Beth	Shore	Beth.Shore@wpsic.com	WPSIC
Joseph	Sklansky	joseph_sklansky@wustl.edu	Washinton University
Brian	Smith	smithbl@wellmark.com	Wellmark
Philip	Smith	philip.smith@emeramaine.com	Emera Maine
Jeffrey	Spector	jeffrey.spector@sodexo.com	Sodexo
Frederick	Stein	fstein@redbox.com	Redbox
Marta	Stitcher	marta.stitcher@thermomix.us	Thermomix
Laura	Sullivan	zsullivan@comcast.net	MSX International, Inc.
Susan	Tahernia	stahernia@aol.com	
Sophie	Thomashausen-Walmsley	sophie.thomashausen-walmsley@us.dufry.com	Dufry Group
Beth	Tippett	btippett@godaddy.com	GoDaddy
Tracy	Todd	todd.tracy@gene.com	Gene
Charika	Tolliver	cctollive1@childrensnational.org	Children National
Melanie	Trostel	mtrostel@smu.edu	SMU
Priya	Vimalassery	VimalasseryPriya@PRAHS.com	Pharmaceutical Research Associates, Inc.
Anne-Marie	Waggoner	Annemarie.Waggoner@walmartlegal.com	Walmart
Ginger	Wang	Gwang.esquire@gmail.com	Yellow Box Corporation
Terry	Warco	twarco@high.net	High

Kameka	Waters	kameka.waters@cns-inc.com	CNS Inc
Megan	Weiler Green	mweilergreen@weilerproducts.com	Weiler Products
Mira	Wolff	mwolff@venbrook.com	Venbrook
Jacqueline	Zane	jacqueline.zane@cabotcorp.com	CabotCorp

ELLN SUBCOMMITTEE REPORTS

January 9, 2019

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW
NETWORK**

December 5, 2018

ERISA Subcommittee Report

Co-Chairs: Mark Burgreen (presenting), Ron Peppe

Texas v. United States decision could impact employer-sponsored health plans

Eversheds Sutherland (US) LLP

On December 14, 2018, a Texas District Court [ruled](#) that the Affordable Care Act's (ACA) requirement that certain individuals maintain a minimum level of health coverage, often referred to as the "Individual Mandate," is unconstitutional in the wake of the Tax Cuts and Jobs Act (TCJA) passed by Congress in December 2017. The court further held that, because the Individual Mandate is critical to the design of the ACA, all remaining provisions of the ACA are unconstitutional. Because the ruling appeared to invalidate the entire ACA immediately, the state attorneys general who stepped in as defendants in the action (the Intervenor Defendants) requested a second order (i) clarifying that the December 14 decision is not immediately effective (and that the ACA remains enforceable), and (ii) either entering a final appealable judgment or certifying the order for immediate appeal. On December 30, the District Court [granted](#) the Intervenor Defendants' request for a final judgment and a stay during the pendency of an appeal.

This legal alert provides a brief overview of the District Court's December 14 and December 30 decisions and the potential impact on employer-sponsored health plans if the entire ACA is found unconstitutional on appeal.

Overview of the Decision

In early 2018, 19 states filed a complaint in the District Court for the Northern District of Texas captioned *Texas v. United States*. The complaint sought, among other things, a declaration that the Individual Mandate, as amended by the TCJA, is unconstitutional and that the remainder of the ACA is inseverable.

Section 5000A of the Internal Revenue Code, as added by the ACA, requires certain individuals to maintain health insurance coverage or make a "shared responsibility" payment. Until the enactment of the TCJA in December 2017, the individual shared responsibility payment was the greater of either 2.5% of household income or a flat dollar amount per uninsured individual. The TCJA reduced the individual shared responsibility payment to \$0 beginning in 2019. The Plaintiffs asserted that because the Individual Mandate no longer triggers a penalty, the Supreme Court's prior ruling in *NFIB v. Sebelius*,

which upheld the constitutionality of the mandate as a permissible exercise of the tax power of Congress, no longer applies. Furthermore, the Plaintiffs asserted that, because the Individual Mandate is so critical to the construction of the rest of the ACA, it is “inseverable,” and thus the entire law is unconstitutional.

The District Court agreed with the Plaintiffs’ arguments on the constitutionality of the Individual Mandate. The court noted that as long as the shared responsibility penalty remains \$0, the Individual Mandate is “unmoored” from a tax, can no longer be “fairly readable as an exercise of Congress’s Tax Power,” and therefore must be ruled unconstitutional. Regarding the ACA’s remaining provisions, the court pointed to statements in the enacted text of the ACA referring to the Individual Mandate as an essential feature and a keystone of the law. The court reasoned that such statements were unambiguous evidence of the intent of Congress to treat the mandate as inseverable from the ACA, and consistent with this intent, the entire law must be held unconstitutional.

In its December 30 order and final decision, the District Court reiterated its position, but agreed that suddenly declaring the ACA immediately void would cause chaos for patients, providers, insurance carriers, and federal and state governments. In fact, in the wake of the December 14 ruling, the Department of Health and Human Services placed a banner on the healthcare.gov open enrollment website that states: “Court’s decision does not affect 2019 enrollment or coverage,” signaling its concern regarding the impact of the decision. Considering these concerns, the court held that its December 14 decision on the unconstitutionality of the ACA will be stayed until Intervenor Defendants exhaust appellate review options.

Given the District Court’s decision to stay the ruling, it is unlikely that consumers, insurers or employers will see changes to the ACA in the short term. The entry of a final judgment on December 30 paves the way for reconsideration by the US Court of Appeals for the Fifth Circuit. However, during the pendency of any appeals, the future of the ACA remains uncertain not only for the public, but also for employer-sponsored plans that are subject to the ACA’s group health plan provisions.

Impact on Employer-Sponsored Health Plans

If the court’s decision regarding the constitutionality of the ACA withstands additional judicial scrutiny, the ruling would eliminate the legislative authorization for all provisions of the law, effectively repealing the statute in its entirety. While the full impact on group health plans is unclear, an affirming final decision from the Fifth Circuit or, possibly, the Supreme Court would certainly result in significant changes to employer-sponsored health coverage, including the following:

- The ACA’s insurance market reforms and other coverage protections would no longer apply to group health plans, including the prohibition of annual and lifetime limits on essential health benefits, restrictions on rescission of coverage, and limits on employee out-of-pocket costs.
- Grandfathered health plans that are currently protected from some of the ACA’s insurance market reforms would be permitted to make changes to premiums,

copays, deductibles, etc., without adding benefits required under the ACA, such as first-dollar preventive care and guaranteed access to OB-GYNs and pediatricians.

- The employer shared responsibility payment would be eliminated; large employers would no longer incur penalties for failing to provide health coverage to full-time employees, and there would be no “affordability” requirements for employee premiums.
- Group health plans would be free to implement the 12-18 month pre-existing condition exclusion periods in place prior to the ACA, subject, presumably, to the limits on such exclusion periods under the creditable coverage rules.
- Because the requirement to cover children up to age 26 would be eliminated, plans could consider lowering the age limit for covered children to under 26 or adding additional conditions for coverage (such as requiring dependent status or excluding children who are eligible for health coverage through a spouse or an employer).
- For insured plans, the medical loss ratio (MLR) rules, which require plans to spend 80%-85% of premiums on medical services, would be eliminated, and employers would no longer be required to provide MLR rebates.
- Employer-sponsored stand-alone health reimbursement accounts (HRAs) would no longer be required to integrate with group health coverage.
- Contributions to health flexible spending accounts (FSAs) would no longer be limited to \$2,700 (for 2019; adjusted annually for inflation).
- Changes to the claims procedures enacted by the ACA would be eliminated, including the requirement to provide for an external review of certain claims.
- Plans would be allowed to implement waiting periods of longer than 90 days for full and part-time employees.
- Minimum essential coverage (MEC) reporting would be eliminated, and employers would no longer be required to report the cost of coverage on employees’ Form W-2.

The items above represent a small sample of the potential impacts of a final decision striking down the ACA in its entirety. There are potential changes to the employer-sponsored health care system that can be predicted, and there will be others that may play out unexpectedly for months or years after a final decision.

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW
NETWORK**

January 9, 2019

Membership Subcommittee Report

Co-Chairs: Carla Ulgen (presenting), Princeton Kim, Erin Hiley

1. Membership stats: As of January 2019, membership in ELLN is 7139. We had the highest attendance for the Legal Quick Hit in September 2018 of all of the networks and the highest participation in our September 2018 webinar of all of the networks. Our Egroup posts for fiscal year 2018 were 2590 which is larger than almost all other networks, except Small Law.
2. Membership Survey: We are considering a membership survey for our network to better understand why members joined our network and what you hope to get from joining the network. The mentorship program survey responses were received at end of 2018 so that we can plan a new program.

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW
NETWORK**

January 9, 2019

Communications Subcommittee Report

Co-Chairs: Monica Torrez-Pfister (presenting), Abigail Morrow, Cecilia Tran, Brad H. Sysol

Below are the proposed description and group rules for the ELLN LinkedIn Group, which we plan to make live within the next week or so:

LinkedIn Group Name: ACC Employment & Labor Law Network

Logo/Image:



Privacy Setting: Standard Group¹

About this group: The Employment & Labor Law Network (ELLN) is a central resource vehicle for all Association of Corporate Counsel (ACC) members with an expertise or interest in labor and employment law matters. The ELLN provides a network for its members to further keep

¹ In Standard Groups:

- Groups will show up in search results on LinkedIn and other search engines.
- Only group members can view or post conversations.
- Group members can invite their 1st degree connections to join.
- Conversations and comments are visible to group members only.
- The group owner has the option to make the group unlisted only once the group is created.
- Group members can approve joining requests they receive from their 1st degree connections.

current and consult on the latest case law and legislative and regulatory actions affecting labor and employment law.²

² By way of example, the ACC Litigation Network's LinkedIn Group has the following language:

"The primary purpose of the Litigation Networks is to provide an organized forum within the ACC to enhance the professionalism of in-house litigators by: encouraging and assisting in the development of the in-house counsel; providing training; exploring the changing relationships between in-house litigators and outside counsel; facilitating the understanding of business objectives in the in-house litigation practice; to discuss and analyze litigation-related legislative or policy issues; to provide a vehicle for change to the judicial system; to facilitate networking."

Group rules:

Welcome to the ACC Employment & Labor Law Network Group!

This is a professional development and discussion group for members of the ACC Employment and Labor Law Network (ELLN).

Any posts that are deemed to be unrelated to employment and labor law will be deleted as will members who consistently post unrelated or promotional content.

Please do not post any solicitations for your business or the services that you or your company provide. Any posting deemed to be a solicitation will be deleted and repeat offenders will be removed from the group.

No profanity will be tolerated. Any posts that are perceived as spam will be deleted immediately as will the member who is posting such content.

If there are any violations of the rules, you will be removed from the group no questions asked.

Why so strict? The primary success of this group stems from how tightly we manage it!

Welcome. Enjoy the dialogue. We look forward to engaging with you.

ELLN Leadership Committee

**ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW
NETWORK**

January 9, 2019

Traditional Labor Subcommittee Report

Co-Chairs: Darryl Uffelmann, Micah Heilbrun, Derek Lipscombe (presenting)

▪ **Joint Employment Developments**

The D.C. Circuit Court put the joint employment debate back in the hands of the NLRB, approving, in part, the Board's Obama-era *Browning-Ferris* decision. In a 2-1 opinion, the appeals court held that it was permissible for the Board to create a standard that considered both the putative employer's reserved right to control and its indirect control over employee's terms and conditions of employment as factors for determining whether businesses should be considered joint employers. However, it also held that the Board didn't apply that standard properly in the case because it failed to articulate the scope of what it considers to be "indirect" control and remanded the case back to the Board for further reconsideration.

Citation:

<https://www.jacksonlewis.com/sites/default/files/docs/DCBrowningFerrisNLRB122818.pdf>

The Board itself further extended the deadline for submitting comments regarding its proposed rulemaking on the standard for determining joint-employer status under the National Labor Relations Act until January 14, 2019. Comments replying to those comments submitted during the initial comment period are due on January 22. Under the Board's proposed rule, joint-employer status will be found only where two entities actually share or codetermine employees' essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction. If implemented, the rule would reinstate the traditional joint-employer standard the Board abandoned in its *Browning-Ferris* decision, 362 NLRB No. 186 (2015).

Citation: NLRB Further Extends Time for Submitting Comments on Joint Employer Rulemaking, <https://www.nlr.gov/news-outreach/news-story/nlr-further-extends-time-submitting-comments-proposed-joint-employer>

Early in 2017, the Board's Inspector General issued a report concluding that Board Member William Emanuel should have recused himself from a significant decision at the end of 2017 involving joint employment based on an alleged conflict of interest. As a result of that report, the 2017 decision which initially reversed *Browning-Ferris* was vacated. This led to the Board announcing that it would deal with the joint employment issue via rulemaking, but questions remained whether Emanuel would be allowed to participate in that process. Board Chairman John Ring told Bloomberg Law that the Board's ethics officer has concluded that Emanuel doesn't have to sit out the rulemaking process.

Citation: <https://www.lexology.com/r.ashx?!=88G27QD>

▪ **The NLRB Issues Its New Strategic Plan for FY 2019 to FY 2022**

On December 7, 2018, the Board issued its new Strategic Plan for Fiscal Years 2019 through 2022. A Strategic Plan is issued every four years by the Board Chairman and General Counsel. The document sets forth the goals, objectives, priorities, and performance measures for managing Board operations. Although the strategic goals set forth in the 2019-2022 Plan are nearly identical to those laid out in the previous plan issued in 2014, the recently released document features several new initiatives and measures.

In the new Strategic Plan, the Chairman and GC state four primary goals:

- Promptly resolve labor disputes affecting commerce by fairly and efficiently investigating, settling, processing and adjudicating unfair labor practices under the National Labor Relations Act;
- Promptly and fairly resolve all questions concerning representation of employees;
- Achieving organizational excellence and productivity; and
- Managing agency resources efficiently and in a manner that instills public trust.

A primary focus of the Strategic Plan is reduction of the backlog of cases and improved efficiency in the disposition of charges filed with the Board. The Plan calls for an annual, Agency-wide 5% reduction in case processing time for unfair labor practice charges from the time of filing through a final decision and/or settlement and closure of the case. Every stage of the process is subject to an expectation of timeliness.

In the Board's supporting Memorandum GC 19-02, entitled "Reducing Case Processing Time," GC Peter Robb explained that, "over the years, the amount of time it takes for cases to be processed and for resolutions to be reached has increased and backlogs of cases have developed." Citing recent statistics, Robb noted in that, "at the end of September 2018, there were 36 pending overage Category 3 cases with the average case pending for 196 days *past* the 49-day target date, 263 pending overage Category 2 cases with the average case pending for 186 days *past* the 77-day target date, and 263 pending overage Category 1 cases with the average case pending for 180 days *past* the 98-day target date. Likewise, between 2002 to the 2018, the median time taken between filing to issuance of complaint fluctuated between 93 and 128 days compared to 44 to 55 days in the 1980s. From fiscal year 2012 to fiscal year 2018, there has been an actual increase of 38 percent of overage cases, if excused cases are counted, even though overall case load decreased by 15 percent during that same period." In fiscal year 2018 alone, the Agency received more than 900 unfair labor practice cases than it disposed of. "Unless these trends are reversed," Robb stated in the Memorandum, "it is clear the Board's mission to effectuate the prompt resolution of unfair labor practices will be compromised."

The Board's new Strategic Plan has been developed to reverse these trends. To assist Regional Directors in achieving the goal of reducing case processing time, the Board is rescinding the mandate to categorize cases under the Impact Analysis Program. Rather than being measured by their ability to meet time targets under the Program, Regional Directors will be assessed based on efficiency of case disposition.

The Strategic Plan offers performance measures that include reductions in time at every stage of a case. Robb acknowledged that the new performance metrics will require regions to adjust their current practices which were tied more closely to the Impact Analysis Program.

However, in his Memorandum, he stated that Regional Directors will be provided with greater discretion to establish necessary case management processes and procedures, but “[n]o singular system will be imposed on Regions or otherwise administered on a nationwide basis. Regions are free to implement their own programs in conjunction and consultation with the Division of Operations Management, consistent with statutory priorities.”

Potential changes considered by the Regions include:

- Being firmer with the deadlines for the Charging Parties to provide their evidence in support of the unfair labor practice charge; Charging Parties will be expected to be able to provide such evidence at the time of filing or within a week of filing.
- Conducting a closer review of Charging Party’s evidence to determine if there is a prima facie case before asking for evidence from the Charged Party and dismissing the charge if the Charging Party has not put forth evidence that supports a prima facie case.
- Demanding faster turnaround times for Charged Parties to respond to requests for evidence – fewer extensions will be granted and extensions will be shorter.
- Providing less time for the parties to try to settle between a merit determination and issuance of a complaint.
- Issuing a complaint on one charge while other related charges are still pending, rather than waiting to issue one omnibus complaint.

Citation: NLRB’s 2019-2022 Strategic Plan can be found at <https://www.nlr.gov/news-outreach/news-story/nlr-issues-strategic-plan-fy-2019-fy-2022>

▪ **Board’s Division of Advice: Union Is Not Entitled to Information About How an Employer Spends Money from the Recent Corporate Tax Cuts**

In late 2017, Congress passed the Tax Cuts and Jobs Act (“TCJA”), which among other things, reduced the corporate tax rate. In January 2018, Nexstar Media the employer informed its unrepresented employees that “the new corporate tax rate will produce a financial benefit ...and the Company wants to extend that benefit to our employees via a one-time bonus and an increase to the 401k match.” The employer’s announcement stated that it was not granting the bonus and increased benefit match to union-represented employees whose contracts were under negotiation.

During the course of bargaining, the union made a written information request to the employer. The request stated the purpose was to prepare for bargaining and “to ensure the tax cut raises wages and stops the offshoring of jobs”. The request had ten separate paragraphs which sought a wide variety of information, including:

- the estimated gains to the corporation and its subsidiaries and affiliates from the TCJA
- the total compensation for executives for the year before and the current year after passage of the TCJA
- The amount spent by the employer on lobbying or public relations campaigns in support of the TCJA

- an accounting of the total amount of profits held overseas, the amount to be repatriated, and the total tax to be paid on that repatriation over each of the next five years

The employer refused to provide the information and the union filed charges.

The charge was sent to the NLRB's Division of Advice as there are a number of similar charges on file dealing with similar requests for information (and similar employer refusals) and the General Counsel wanted to act in a consistent manner.

Before getting to the merits of the issue, Advice set forth the general standard of law that when the requested information "concerns bargaining unit employees or their terms and conditions of employment" then it is generally considered to be relevant to bargaining and must be produced "unless the employer rebuts the presumption."

In its request, the union stated there were two purposes in needed the information in order to conduct bargaining. The first was to ensure, through bargaining, that the employer's TCJA benefit went to increasing pay of the employees and to returning jobs to the United States. The second purpose was to aid the union in its bargaining about bonuses and 401k contributions. Advice concluded that "[n]either articulated purpose entitles the Union to the information it requested."

Advice noted, the first purpose "created no duty because that purpose goes beyond the Union's statutory role." In other words, there was not a direct relationship between the federal tax act and the employees' terms and conditions of employment. In this regard, Advice noted "the Union has failed to identify any provision in the TCJA obligating the Employer to spend its tax savings toward the Union's preferred objectives or granting the Union a role in enforcing such a requirement." Without some direct link to, obligation created by, the tax cut law, Advice noted that how an employer chose to spend any savings it garnered from the tax cut was akin to an entrepreneurial decision which is not a mandatory subject of bargaining.

As to the second purpose, Advice stated that the union failed to show how the information was "reasonably necessary" to engage in meaningful bargaining over bonuses and 401k matches. The union had contended in support of its charge that the employer made the information about the size of the tax benefit relevant because it announced that was granting benefits as a result of the TCJA. Advice brushed this claim aside, stating "the Union has failed to explain how the Employer's announcement rendered the requested information reasonably necessary to frame or support any Union bargaining proposals."

Citation: This information is provided courtesy of Proskauer. The full article can be found <https://www.laborrelationsupdate.com/uncategorized/union-not-entitled-to-information-about-how-employer-spends-money-from-tax-cut-nlr-general-counsel-rules/>

Here's an article from 2018 regarding the tax cut dispute between unions and some employers. <https://www.dallasnews.com/business/economy/2018/04/04/tax-cuts-unions-american-airlines-att-frito-lay-ask-plans-extra-cash>

▪ **NLRB Removes Key Hurdles for Deferring ULP Charges to Arbitration**

The National Labor Relations Board recently issued more good news for unionized employers. In a guidance memorandum issued on December 28, 2018, the Board's General Counsel announced an updated approach that will help employers avoid litigating unfair labor practice

charges filed by unions or union-represented employees who have filed grievances regarding the same underlying dispute.

As background, in 2014, the Board imposed several additional requirements for an employer to defer an unfair labor practice charge to a grievance-arbitration procedure and, thus, postpone or categorically avoid having to litigate the charge. In this 2014 decision, *Babcock & Wilcox Construction Co.*, the Board expressly imposed the new requirements for specific types of cases, *i.e.*, cases involving alleged violations of Sections 8(a)(3) and 8(a)(1) of the National Labor Relation Act where the union and employee have not yet filed a grievance regarding the dispute at issue, or where an arbitrator has issued a decision. In other words, the Board expressly applied the new *Babcock* requirements to Section 8(a)(3) and 8(a)(1) claims eligible for “pre-arbitral deferral” under the Board’s *Collyer Insulated Wire* doctrine or such claims eligible for “post-arbitral deferral” under the Board’s *Spielberg Manufacturing* doctrine. This decision imposed several types of burdens on employers, such as by enabling unions to “block” deferral in many situations.

The *Babcock* decision did not, however, impose these new requirements on cases where the union and employee had filed a grievance by the time the employer requested deferral, but an arbitrator had not yet decided that grievance, *i.e.*, cases eligible for deferral under the Board’s *Dubo Manufacturing* doctrine. Although the Board did not apply these new requirements to *Dubo* deferral cases, the Board’s prior General Counsel subsequently “assumed” in a 2015 memorandum that the new requirements did extend to *Dubo* cases, and therefore took that position. Thus, for several years, employers faced the burden of overcoming additional obstacles in order to defer an unfair labor practice charge to arbitration in these situations.

On December 28, however, the Board’s new General Counsel instructed Board officials to follow a new approach. First, the General Counsel instructed Board officials not to apply the burdensome *Babcock* requirements to cases eligible for *Dubo* deferral. Rather, he created a more evenhanded standard that focuses on whether the union has the ability to process the grievance to arbitration, rather than on whether the union agrees or desires to do so. He also described in detail the new analysis that Board officials should follow in this situation.

Second, as an important sign of potential future developments, the General Counsel wrote that he “believes that *Babcock* was wrongly decided and should be reexamined by the Board.” Given that the Board’s new Republican majority was likewise appointed by the Trump administration and given that the Board’s new majority frequently views issues the same as the General Counsel, this strongly signals that the Board may reconsider *Babcock* or other deferral issues in the near future.

Citation: This information is provided courtesy of Squire Patton Boggs. The full article can be found <https://www.employmentlawworldview.com/unionized-employers-nlr-removes-key-hurdles-for-deferring-ulp-charges-to-arbitration-us/#page=1>

Here’s a link to the GC memo: https://nlrb.gov/news-publications/nlrb-memoranda/general-counsel-memos?memo_number=GC%5C+19

- **NLRB Decision Expected Soon on Whether Independent Contractor Misclassification Is an Unfair Labor Practice**

In September 2017, an Administrative Law Judge ruled in *Velox Express, Inc.* that misclassification of employees as independent contractors violates Section 8(a)(1) of the National Labor Relations Act. 2017 NLRB LEXIS 486 (Sept. 25, 2017). The ALJ found that the Arkansas logistics company committed a ULP by misinforming drivers that they were independent contractors and not employees. Doing so, the judge concluded, sent an illegal message to the workforce that they could not band together to form a union or otherwise join up to act for their mutual aid or protection, which is a no-no under labor law.

Under a theory espoused by former Board General Counsel Richard Griffin, this fact pattern should be a standard and common consequence to a misclassification finding. Griffin convinced several lower-level administrative law judges (ALJs) last year that simply misclassifying workers should lead to an automatic ULP even if no other labor law violations are present.

Velox appealed that decision to the Board, and before ruling the Board invited interested parties to file amicus briefs to address “under what circumstances, if any, the Board should deem an employer’s act of misclassifying statutory employees as independent contractors a violation of Section 8(a)(1) of the National Labor Relations Act.” Briefs were due by April 30, 2018.

One of the amicus briefs was filed by the current General Counsel, Peter Robb. Parting company with Griffin, Robb has argued that misclassifying an employee as independent contractor, which deprives the worker of protection under the Act, standing alone, does not violate the Act.

**MINUTES OF THE
ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT
& LABOR LAW NETWORK (ELLN) MONTHLY
TELECONFERENCE**

The Employment and Labor Law Network (“ELLN”) held its Monthly Teleconference on Wednesday, March 6, 2019.

I. Opening Business

- a. Welcome – Network Chair Eric de los Santos (TrueBlue, Inc.) called the meeting to order at approximately 3:00 p.m. ET and welcomed all participants. Eric asked attendees to confirm their attendance either by logging into the Web presentation and/or by sending an e-mail to elc@accglobal.com or elln@accglobal.com.
- b. February’s Meeting minutes were posted to the eGroup. Eric asked for a motion to approve the minutes of the February 2019 Teleconference. Hearing no objections to the minutes as prepared, Eric confirmed approval of the February meeting minutes.

II. Announcements and Staff Report

Irene Meroka reported on behalf of ACC and made the following announcements:

- The ACC has opened its first office in Brussels as part of an effort to persuade more in-house lawyers to join the organization’s European chapter. Giuseppe Marletta, will lead the new office.
- Discounted, early registration is now open for the 2019 [ACC Annual Meeting](#) which will be held in Phoenix, Arizona, from Oct 27-30. This will be a great networking opportunity and you will be able to earn a year’s worth of CLE credits. Early Registration Ends April 3.
- There is a new resource available on the ACC website, courtesy of Jackson Lewis P.C. This is a particularly helpful Global Employment Law resource for multinational, in-house counsel. Topics such as global labor regulation, termination practices and collective dismissals are among the many that are discussed.

III. Legal Quick Hit Presented by Jackson Lewis P.C. – Non-Competes and Restrictive Covenants Under Assault

This month’s topic was presented by Robin Davis, Principal in the Raleigh, North Carolina office of Jackson Lewis P.C. and stemmed from President Obama’s 2016 “call to action” to reform non-compete laws in the U.S. which spurred a number of state and local legislatures to pass laws significantly limiting employers’ utilization of noncompetition restrictions. Participant questions were answered. Robin Davis can be contacted via e-mail at Robin.Davis@jacksonlewis.com.

IV. Additional Announcements

April Goff, ELLN Vice-Chair (JCPenney), mentioned that panelists are needed for the ACC annual meeting. Diverse and dynamic speakers are requested for the panels that were approved by the Programming Committee. If you are interested in being a panelist, please nominate yourself under your desired panel on the ACC website. The ACC will comp the registration fee for those selected.

V. Subcommittee Reports

The following Subcommittees presented reports:

- **Policy:** Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone). Greg Watchman presented the Subcommittee's report. Additional details are included in the attached written report.
- **Programs:** Rachel Barack (Clorox), Michael Booden (R1 RCM Inc.), Marjory Robertson (SunFinancial), Nikki Odom (3M Company), Susan Tahernia. Michael Booden presented the Subcommittee's report. All 5 programs now have organizers. The Diversity and Inclusion program may be modified to include members that are not within legal departments to engage a larger audience.
- **Membership:** Carla Ulgen (Erikson LivingManagement), Princeton Kim (Cruise Automation), Erin Hiley (American Specialty Health). Princeton Kim presented the Subcommittee's report. Additional details are included in the attached written report.
- **Labor:** Darryl Uffelmann (Anheuser-Busch Companies), Micah Heilbrun (Exxon Mobil Corp.), Derek Lipscombe (Toyota). Derek Lipscombe presented the Subcommittee's report. Additional details are included in the attached written report.
- **Absence and Disability Management:** Marjory Robertson (Sun Life Financial), Renee Grant Bluechel (Zulily Co.), Marti Cardi (Matrix Absence Management). Marti Cardi presented the Subcommittee's report. 23 states have now introduced new bills to propose mandatory paid family and medical leave. Some of these states have also included corresponding, tax incentive bills for employers to voluntarily provide paid family and medical leave. New law trends include donor leave, (job protection and paid leave for those who serve as organ, bone marrow, tissue donors) and various maternity leave protection laws that can include a leave of absence as an accommodation for pregnancy (regardless of whether it is defined as a disability).
- **Webcasts:** Alexandra Bodnar (Volt Information Services), Alexis Pheiffer (Sprouts Farmers Markets), Jody Riger (SunChemical) Alexis Pheiffer presented the Subcommittee's report. The ACC is looking for speakers from the network for webcasts that will be presented in April. Topics include combating bullying, sexual harassment and violence in the workplace, hiring and terminating employees. The dates will be posted under eGroups for both of these programs. Please contact Alexis or any of the co-chairs if you are interested in presenting. We are also working with Jackson Lewis regarding the webcasts that will take place in September. Updates are forthcoming.

VI. New-to-In-House Virtual Roundtable Update: April Goff, ELLN Vice-Chair (JCPenney), presented for Eric de los Santos. April Goff mentioned that next month there will be a roundtable meeting in partnership with Jackson Lewis. The meeting is scheduled for Thursday 3/21 at 11:00a (PST), will be 1.5 hours and is open to all members. 2 panelists from our membership are needed to work with Jackson Lewis for this discussion that is directed towards those that are new, in-house / small law firm practitioners. Insight sharing, tools and guidance are the focus for this interactive discussion. Please email the leadership if you are interested in being a panelist.

VII. Industry-Focused Programming –April Goff, ELLN Vice-Chair (JCPenney) and Eric de los Santos, ELLN Chair (TrueBlue, Inc.). No discussion.

VIII. EGroup Spotlight – April Goff, ELLN Vice-Chair (JCPenney). No discussion.

IX. Other Old/New Business – New Member Comments/Items from the Floor – April Goff, ELLN Vice-Chair (JCPenney) reminded members to please join the ELLN LinkedIn network.

X. Next Teleconference – Wednesday, April 3, 2019, 3pm Eastern Time

XI. Adjourn

There being no further business, the meeting adjourned at approximately 3:50 p.m. ET.

Respectfully Submitted,

Douglas A. Hass

Secretary

ELLN ATTENDANCE

March 6, 2019

First Name	Last Name	Email Address	Company	Title
Salman	Ahmad	salmanahmad@deltek.com	Deltek, Inc.	VP, Legal
R	Baker	christopher.baker@nationslending.com	Nations Lending Corporation	General Counsel
Shama	Barday	sbarday@onetrust.com	OneTrust LLC	Legal Counsel
Lori	Beard	l.beard@sagedining.com	SAGE Dining Services, Inc.	Staff Attorney
Samantha	Brem	samantha.brem@kobie.com	Kobie Marketing, Inc.	Attorney
Sarah	Cammock	scammock@mytalentlaunch.com	TalentLaunch	General Counsel
Ruben	Cantu	Ruben.Cantu@walmartlegal.com	Walmart	Senior Associate General Counsel
Gina	Casias	gmcasias@gmail.com		Director
Yewleh	Chee	ychee@salesforce.com	salesforce.com, inc.	Corporate Counsel, Global Labor & Employment
Kara	Cleary	kara.cleary@bluelinxco.com	BlueLinx Corporation	Senior Legal Counsel Litigation & Compliance
Julie	Coletti	jcoletti@aligntech.com	Align Technology, Inc.	Vice President & Associate General Counsel
Trisha	Corbin	Trisha.corbin@safelite.com	Safelite Group, Inc.	Corporate Counsel
Cynthia	Dixon	Cynthia.Dixon@fisglobal.com	FIS	Corporate Counsel
Teresa	Ellenburg	teresa.ellenburg@sodexo.com	Sodexo, Inc.	Executive Director
Jessica	Fegan	jessica.fegan@jhuapl.edu	The Johns Hopkins University Applied Physics Laboratory	Senior Associate General Counsel
Gina	Fornario	gina.fornario@ros.com	Ross Stores, Inc	Senior Director, Employment Law
Bethany	Gorlin	bethany.gorlin@gates.com	Gates Corporation	Corporate Counsel, Compliance & Litigation
Nikiann	Gray	ngray@eliglobal.com	Eli Global, LLC	Corporate Attorney
Cheryl	Green	Cheryl.Green@34group.com	BAK USA Technologies Corporation	In-House Counsel
Anthony	Grzyb	anthony.grzyb@saiglobal.com	SAI GLOBAL	Group General Counsel
John	Hanley	jhanley@exploramed.com	ExploraMed Development	VP
Leilani	Harbeck	leilani.harbeck@conagra.com	Conagra Brands, Inc.	Senior Counsel
Doug	Hass	douglash@lifeway.net	General Counsel	Lifeway Foods

Jacqueline	Hawkins	jhawkins@sentinelra.com	Sentinel Risk Advisors	General Counsel & Director of Risk Transfer
Ryan	Hayes	rhayes@paybyphone.com		Legal Counsel
Jane	He	Jane.He@snpgroup.com	SNP Group	Legal Counsel
Richard	Hedrick	holt.hedrick@calumetspecialty.com	Calumet Specialty Products Partners, L.P.	Assistant General Counsel
Matthew	Herman	matthew.herman@russellreynolds.com	Russell Reynolds Associates	Associate General Counsel
Akira	Heshiki	akira.heshiki@standard.com	Standard Insurance Company	Senior Attorney
Kevin	Hughes	kevin.hughes@neustar.biz	NeuStar, Inc.	VP-Deputy General Counsel, Corporate & Securities
Robert	Hurwitz	robbie.hurwitz@gmail.com	Rocket Lab USA Inc.	Senior Legal Counsel
Michelle	Larson	larson@tankstar.com	Tankstar USA, Inc.	Corporate Counsel
Joelle	Laszlo	jelasz@email.wm.edu	Peraton Inc.	
Kimberly	LeBlanc	kimberly.leblancross@redcross.org	American Red Cross	Counsel
Shin-Yueh (Anderson)	Lee	anderlee2@gmail.com	ENGIE North America Inc.	Sr. Attorney - Corporate & Deputy Ethics Officer
Ryan	Lodata	ryan.lodata@anton-paar.com	Anton Paar USA, Inc.	Staff Attorney
Cynthia	Lohman	clohman@nrgmedia.com	NRG Media, LLC	General Counsel & Dir. Hum. Resources
Sheila	Luken	sheila.luken@transamerica.com	Transamerica Life Insurance Company	Assistant General Counsel
Patricia	MacAskill	trish.barrett81@gmail.com	Floyd's 99 Holdings LLC	General Counsel
Christopher	Massey	christophermassey@brookshires.com	Brookshire Grocery Company	Vice President - Corporate Counsel, Secretary
Marianne	McLaughlin	mmclaughlin@planalytics.com	Planalytics, Inc.	General Counsel
Nancy	Mellard	nmellard@cbiz.com	CBIZ Benefits & Insurance Services Division	Executive Vice President & General Counsel
Nicole	Miller	nicole.miller2@mckesson.com	McKesson Corporation	Employment Counsel
Megan	Newman	megan.newman@vistage.com	Vistage Worldwide, Inc.	Staff Counsel
Vannie	Nguyen	vnguyen@aligntech.com	Align Technology, Inc.	Counsel
Jamie	O'Grady	jamie.ogradys@channeladvisor.com	ChannelAdvisor Corporation	Senior Corporate Counsel
Brenda	Pence	brenda.pence@siemensgamesa.com	Siemens Gamesa Renewable Energy, Inc.	Lead Counsel
Jerry	Polansky	jerry.polansky@emc.com	EMC Corporation	Corporate Counsel

Tanya	Pothen	tanya.pothen@gmail.com	Mahindra Automotive North America, Inc	Associate Corporate Counsel
Jessica	Rieken	jrieken@heartland.com	Heartland Dental	Corporate Counsel, Director
Robert	Ryan	rryan@sofs.cc	Stallion Oilfield Services	Deputy General Counsel
Tate	Seideman	tseideman@fikesinc.com	Fikes Wholesale, Inc.	Vice President & General Counsel
Mary Beth	St. John	mstjohn@nbme.org	National Board of Medical Examiners	Legal Counsel
Anna Rose	Stern	sternar@ymail.com	SourceAmerica	SVP, CLO & General Counsel
Kathryn	Stieber	kstieber@depaul.edu	DePaul University	Deputy General Counsel
John	Theiss	john.henry.theiss@gmail.com		Corporate Counsel
Steve	Weber	sweber@nbcllc.com	Network Building & Consulting, LLC	General Counsel
Jacqueline	Zane	jacqueline.zane@cabotcorp.com	Cabot Corporation	Counsel
Allen	Zargar	allen.zargar@nevro.com	Adverum Biotechnologies, Inc.	Corporate & Compliance Counsel
Dirk	van de Bunt	dvandebunt@grventures.com	GR Ventures	Counsel

ELLN SUBCOMMITTEE REPORTS

March 6, 2019

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

March 6, 2019

POLICY Subcommittee Report

Co-Chairs: Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone) (presenting)

1. Supreme Court Vacates Equal Pay Act Decision

On February 25, the United States Supreme Court vacated a 2018 Ninth Circuit decision that held prior salary cannot be used to justify a wage differential under the Equal Pay Act. The Court did not evaluate the merits of the case, but rather, vacated because the judge who wrote the Ninth Circuit opinion died before it was issued, and without his vote, his opinion would not have had majority support. The case was remanded for further proceedings. *Yovino v. Rizo*, 586 U.S. ___ (2019)

2. Fourth Circuit Holds Rumors May Create Liability for Hostile Work Environment

The Fourth Circuit recently found that employers may be liable under Title VII for creating a hostile work environment when they fail to effectively stop rumors of a sexual relationship between coworkers. The case was brought by a female manager whose male coworkers spread false gossip that she had received promotions because of a sexual relationship with a male manager. The plaintiff was terminated after complaining to human resources about the rumors, and she brought claims for sexual harassment and retaliation. The district court granted a motion to dismiss, holding that the rumor was not sex-based harassment, and that the harassment was not sufficiently severe or pervasive to give rise to a hostile work environment. The Fourth Circuit reversed, finding that the plaintiff's complaint was based on sex because it invoked a common stereotype "that generally women, not men, use sex to achieve success." The court also found that the alleged harassment was severe or pervasive based on the plaintiff's allegations that the rumors persisted continuously for two months. *Parker v. Reema Consulting Servs.*, No. 18-1206 (4th Cir. Feb. 8, 2019)

3. Ninth Circuit Holds that Federal and State Background Check Disclosures May Not Be Combined

On January 29, the Ninth Circuit held that an employer may not satisfy the requirement under the Fair Credit Reporting Act or the California ICRAA to provide a background check disclosure "in a document that consists solely of that disclosure" by combining federal and state law disclosures in the same document. The court found that in addition to violating the standalone requirements of both laws, combining the disclosures prevented them from being "clear" as required by both the FCRA and ICRAA. *Gilberg v. California Check Cashing Stores*, No. 17-16263 (9th Cir. Jan. 29, 2019)

4. OFCCP Establishes Voluntary Enterprise-wide Review Program

On February 13, the OFCCP issued a directive establishing the development of a Voluntary Enterprise-wide Review Program (VERP). The program will have a top tier of contractors with model diversity and inclusion programs who may remain in the VERP for five years, and a second tier of compliant contractors who will receive individualized compliance assistance and may stay

in the VERP for three years. During the application progress, the OFCCP will conduct compliance reviews of the contractor's headquarters and a subset of other establishments. Contractors participating in the VERP will not be subject to compliance evaluations. Any contractor selected for the VERP must agree to provide periodic reports and information to OFCCP so that continued compliance may be determined, and the OFCCP will still retain the right to conduct third party or individual complaint investigations of contractors participating in the VERP.

5. OFCCP Will Post CSAL Online in March

The OFCCP announced that it will be posting the Corporate Scheduling Announcement List (CSAL) on its online FOIA library in mid to late March, and will issue scheduling letters to 3,500 federal contractors thereafter. For the first time, CSAL letters will not be mailed, so contractors will need to proactively check [online](#) to determine if they will be audited. Contractors can also subscribe to the OFCCP's [listserv](#), so they will promptly know when the list posts. 500 of the entities chosen for audit will be selected for a new "focused review," which will include interviews with managers and protected employees, as well as recruiting, hiring and accommodations information.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

March 6, 2019

Membership Subcommittee Report

Co-Chairs: Carla Ulgen (presenting), Princeton Kim, Erin Hiley

Membership Sub-Committee Report

1. Membership stats: Our ELLN membership statistics increased from 7030 in November 2018 to 7202 in January 2019 (approx. 2.5% increase). Our attendance for the Legal Quick Hit in January 2019 was 118 and in February 2019 was 83. These LQH attendance numbers were the second highest across all ACC Networks for both months (New to In-House had the highest LQH attendance for both months).
2. Membership Survey: The mentorship program announcement and forms were posted to the EGroup the week of February 18th. Thank you, Doug Hass for your help. We have already received multiple requests from members interested in becoming mentors or mentees. We are also beginning a campaign to reach out to minority corporate counsel groups to let them know about opportunities in our network.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

March 6, 2019

Traditional Labor Subcommittee Report

Co-Chairs: Darryl Uffelmann, Derek Lipscombe, Micah Heilbrun (presenting)

▪ **Board Status Update**

The Board continues to operate with four members. Former National Labor Relations Board (NLRB) member Mark Gaston Pearce's five-year term, initiated by former President Obama, come to an end in August 2018. Last year, President Trump nominated Pearce to serve another term, but his nomination had not yet passed the Senate. Now, Pearce has stated he is no longer seeking to serve another term at the NLRB.

Pearce served on the Board from 2010 through 2018 and oversaw many controversial decisions. From the "ambush election rule" change to crackdowns on employer personnel policies to attacks on class action waivers, Pearce changed the American labor law landscape (which the current NLRB is already undoing).

Citation:

<https://www.natlawreview.com/article/former-nlr-chair-walking-away-Board>

▪ **The Latest on Union Dues**

General Counsel: Unions Should Disclose Fees

NLRB: Objectors cannot be charged for Lobbying Activities

General Counsel Peter Robb recently issued a GC Memorandum related to compulsory union dues deductions and dues checkoff obligations. Robb encourages the Board to issue a decision that would require labor unions to be more transparent with regard to the initial notice it must provide to employees subject to a union security clause of their statutory right to refrain from joining the union. The memorandum further addresses instances in which limitations on employees' abilities to revoke their dues deduction authorizations are unlawful. Robb said the Board should overrule a 1979 decision that requires workers to send forms revoking permission to deduct dues by certified mail, citing language barriers, transportation issues, and the absence of available facilities that can make that difficult for many workers. The Memorandum also told regional directors that common union policies requiring workers to revoke permission within a certain time window before the expiration of a collective bargaining agreement violated the National Labor Relations Act because the law requires such a period "upon" expiration of an agreement, and not before, he said.

On March 1, the Board in a 3-1 decision held that unions cannot charge Beck objectors for costs related to lobbying activities, in a case of first impression. The Board said lobbying is not part of a union's representational duties under the NLRB. The Board said that lobbying is not a part of a union's "representative functions," even when it is indirectly related to collective bargaining, in a decision involving a United Nurses and Allied Professionals local, the Board said the union violated the National Labor Relations Act by charging so-called objectors who worked at hospitals in Vermont and Rhode Island for the costs of lobbying for various bills in the states' legislatures.

Citations:

<https://www.nlr.gov/news-publications/nlr-memoranda/general-counsel-memos>

<https://www.nlr.gov/news-outreach/news-story/nlr-sets-standards-affecting-beck-objectors-union-lobbying-expenses-are-0>

United Nurses and Allied Professionals, National Labor Relations Board, No. 01–CB–011135, March 1, 2019

- **Ban the Rats**

The 7th Circuit Court of Appeals ruled that the town of Grand Chute, Wisconsin did not violate a local union’s First Amendment rights by requiring it to take down a giant inflatable rat because the town’s 2014 sign ordinance, which banned private signs on the public way, did not discriminate on the basis of content in violation of the First Amendment.

The local union had sued after the town’s code enforcement officer ordered the takedown of a 12-foot balloon known as Scabby the Rat in 2014. Construction and General Laborers’ Local Union No. 330 had erected the balloon across from a Toyota dealership employing a masonry company that allegedly was not paying standard wages and benefits.

According to Bloomberg Law, other federal appeals courts have analyzed the First Amendment issues differently, making it possible that the U.S. Supreme Court will eventually be asked to rule.

Citation:

Construction and General Laborers' Union No. 330 v. Town of Grand Chute, 7th Cir., February 14, 2019, No. 18-1739; <https://news.bloomberglaw.com/daily-labor-report/santa-spider-man-help-scabby-the-rat-survive-appeals-court-case>.

- **Union Campaigns: The Latest Installment of What Not to Do (*Valmet*)**

Valmet, a company that manufactures/rebuilds paper manufacturing equipment, was in the throes of a union campaign. Two weeks prior to the union vote, Valmet announced a multiple choice quiz “to learn the REAL FACTS about the union” and a raffle for those who submitted responses. First prize in the contest yielded \$900 (equivalent to one year’s worth of union dues) and second prize paid out \$450 (six months of dues). It worked! Valmet won!! However, that victory was short lived.

On Feb. 4th the Board – in an opinion issued by all Trump-appointed members – found the raffle violated the law and warranted setting aside the election. Specifically, it held that the amount of cash being offered, the fact all employees eligible to vote could participate in the raffle, the fact that the company didn’t have a history of offering cash prize contests in contexts outside of the pending union election, and the raffle’s proximity to the vote (just over 24 hours prior to the election) all rendered the contest an unlawful attempt to sway votes.

Citation:

[*Valmet, Inc.*, 367 NLRB No. 84 \(2019\)](#)

**MINUTES OF THE
ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT
& LABOR LAW NETWORK (ELLN) MONTHLY
TELECONFERENCE**

The Employment and Labor Law Network (“ELLN”) held its Monthly Teleconference on Wednesday, May 1, 2019.

I. Opening Business

- a. Welcome – Network Chair Eric de los Santos (TrueBlue, Inc.) called the meeting to order at approximately 3:00 p.m. ET and welcomed all participants. Eric asked attendees to confirm their attendance either by logging into the Web presentation and/or by sending an e-mail to ellc@accglobal.com or elln@accglobal.com.
- b. April’s Meeting minutes were posted to the eGroup. Eric asked for a motion to approve the minutes of the April 2019 Teleconference. Hearing no objections to the minutes as prepared, Eric confirmed approval of the April meeting minutes.

II. Announcements and Staff Report

Irene Meroka reported on behalf of ACC and made the following announcements:

- The ACC Europe Annual Conference and which is taking place in Edinburgh, Scotland, on 5/12-5/14.
- The Global Women in Law & Leadership Symposium and Honors Dinner will take place on Tuesday, 6/18 in the Delegates Dining Room at the United Nations in New York. The half day Symposium will bring together high-level professionals to delve into the many issues women face in the workplace and particularly in the corporate legal profession. The dinner will feature distinguished guest speakers and honorees who have made significant contributions to the legal profession and have been instrumental in advancing opportunities for women around the world. For additional information and registration.
- The Corporate Counsel University Conference will be taking place in Minneapolis on 6/26-6/28.

III. Legal Quick Hit Presented by Jackson Lewis P.C. –

“Wage and Hour Considerations for Independent Contractors”

Many employers utilize independent contractors. But do they meet the legal classifications? Under the FLSA and similar state laws, the wrong determination can result in a significant monetary liability. Jackson Lewis presenter Stephanie Peet discussed the scenarios employers must take into consideration when determining whether someone is an independent contractor or employee.

Speaker: [Stephanie Peet](#)



[Stephanie J. Peet](#) is a Principal in the Philadelphia, Pennsylvania, office of Jackson Lewis P.C. She regularly represents management in employment discrimination and wage and hour cases filed in both federal and state courts, as well as equal employment opportunity and labor relations matters pending before federal and state agencies.

IV. Subcommittee Reports

The following Subcommittees presented reports:

- **Programs:** Rachel Barack (Clorox), [Michael](#) Booden (R1 RCM Inc.), Marjory Robertson (SunFinancial), Nikki Odom (3M Company), Susan Tahernia. Michael Booden presented the Subcommittee's report. There have been a good amount of submissions for panelists for the annual meeting in Phoenix. The only outstanding program looking for a presenter is the Key Employee Benefit Issues for Non-Benefit Lawyers. All other programs for this meeting have corresponding presenters. If you are interested, please contact members of this Subcommittee.
- **Labor:** Darryl Uffelmann (Anheuser-Busch Companies), Micah Heilbrun (Exxon Mobil Corp.), Derek Lipscombe (Toyota), and Kevin Chapman. Kevin Chapman presented the Subcommittee's report. Additional details are included in the attached written report.
- **ERISA:** Co-Chairs: Ron Peppe (Canam Steel Corp.), Mark Burgreen (Marriott). Mark Burgreen presented the Subcommittee's report. Additional details are included in the attached written report.
- **Webcasts:** Alexandra Bodnar (Volt Information Services), Alexis Pfeiffer (Sprouts Farmers Markets), Jody Riger (SunChemical). Jody Riger presented the Subcommittee's report. This Subcommittee is in the process of scheduling 4 webcasts scheduled for this year. The next webcast will take place May 22nd and the topic is "Pay Equity". The second webcast will take place on June 13th and the topic is Managing Global Labor and Employment Issues. The third webcast will take place on August 21st and the topic is Noncompete and Restrictive Covenants. The fourth will take place on September 17th with the NLRB and Transition. Reminder emails are forthcoming. If you have an interest in being a moderator, please contact a member of this Subcommittee.
- **International:** Jim Beyer (Infosys), Chuck Coleman (Raytheon), Kevin Reed (TrueBlue), Janet Tacoronte (Selina). Eric de los Santos presented the Subcommittee's report. A virtual round-table meeting is being planned for mid-June and the topic will be "The Me Too Movement and Sexual Harassment Outside of the U.S.". The plan is to have a presentation on the topic but also staff the panel with members from the International Practice Group who are knowledgeable about international sexual harassment law to speak on this issue. Please contact members of this Subcommittee if you are interested.
- **Library Archives/Task Force:** Alexis Pfeiffer (Sprouts Farmers Markets), Judith Villarreal (CorCap Investments). Kevin Chapman (Dow Jones) presented the Subcommittee's report. This Subcommittee is currently collecting information in order to begin.

- **Membership:** Carla Ulgen (Erikson LivingManagement), Princeton Kim (Cruise Automation), Erin Hiley (American Specialty Health). No discussion.
- **Library Archives/Task Force:** Alexis Pfeiffer (Sprouts Farmers Markets), Judith Villarreal (CorCap Investments). Kevin Chapman (Dow Jones) presented the Subcommittee's report. This Subcommittee is currently collecting information in order to begin.
- **Policy:** Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone). Additional details are included in the attached written report.

V. Roundtable Update - No discussion.

VI. Industry-Focused Programming –April Goff, ELLN Vice-Chair (JCPenney) and Eric de los Santos, ELLN Chair (TrueBlue, Inc.). No discussion.

VII. EGroup Spotlight – Monica Torres (TrueBlue, Inc.) Monica spoke about insufficient billing by Outside Counsel. Monica shared her thoughts and encouraged questions and thoughts about billing from the group.

VIII. Other Old/New Business – New Member Comments/Items from the Floor – April Goff, ELLN Vice-Chair (JCPenney). No discussion.

IX. Next Teleconference – Wednesday, June 5, 2019, 3pm Eastern Time

X. Adjourn

There being no further business, the meeting adjourned at approximately 4:04 p.m. ET.

Respectfully Submitted,

Douglas A. Hass
Secretary

ELLN ATTENDANCE

May 1, 2019

First Name	Last Name	Customer Company	Job Title	Customer Email
Zachary	Adams	Aya Healthcare	Corporate Counsel	zachary.adams@ayahealthcare.com
Daniel	Aiman			danaimanj@gmail.com
Suraj	Akotia	National Services Group, Inc.	General Counsel	sakotia@nsgmail.com
Melissa	Alexander	Dell SonicWall	AGC	mcalawyer@gmail.com
Thomas	Blackburn	BP Legal	Attorney	Thomas.Blackburn@bpx.com
Alexandra	Bodnar	Volt Information Sciences, Inc.	Vice President, Deputy General Counsel	abodnar@volt.com
Valerie	Bono	Tang Media Partners	Corporate Legal Associate	valeriebono@gmail.com
Michael	Booden	Old World Industries, LLC	Senior Legal Counsel	boodenm@comcast.net
Peggy	Brady	Denso International America, Inc.	Senior Corporate Counsel	peggy_brady@denso-diam.com
Kimberly	Brown-Gibbs	Anthem, Inc.	Senior Legal Counsel	kimberly.brown-gibbs@anthem.com
Kevin	Chapman	Dow Jones	Associate General Counsel	kevin.chapman@dowjones.com
Sara	Clark	Ohio School Boards Association	Chief Legal Counsel	sclark@ohioschoolboards.org
Michele	Conte	AmerisourceBergen Corporation	Vice President and Associate General Counsel, Employment and Lab	mconte@amerisourcebergen.com
Melodie	Craft	McGrath RentCorp	VP of Legal Affairs & Risk Management	melodie.craft@mgrc.com
Naana	Danquah Jefferson	Schlumberger	Senior Legal Counsel, Drilling NAL	NDanquah@slb.com
Nori	Fey	BAYADA Home Health Care, Inc.	Director, Legal Services	nfey@bayada.com
Barbara	Fiske-Nyland	Big Switch Networks, Inc.	Head, Legal Affairs	barbara.fiske-nyland@bigswitch.com
Amy	Gallent	Catalina US Insurance Services	US GC	amygallent@gmail.com
Mel	Goodwin	North Carolina Community Health Center Association	General Counsel	goodwinm@ncchca.org
Tracey	Hannah	Hallmark Cards, Inc.	Assistant General Counsel	Tracey.Hannah@hallmark.com
Farah	Hansen	Hughes Marino	Counsel	farah.hansen@hughesmarino.com
Rebecca	Hirschklau	ASPCA	Counsel, Labor and Employment	rebecca.hirschklau@aspca.org
Ryan	Hoch	CHS Inc.	Principal Legal Counsel	ryan.hoch@chsinc.com
Robert	Holladay	Cal-Maine Foods, Inc.	Vice President & General Counsel	rholladay@cmfoods.com
Deborah	Hollo		Corporate Counsel	deborah.hollo@panasonic.aero
Cathi	Hunt	Starbucks Coffee Company	Associate General Counsel - Labor & Employment and Litigation	cathi.hunt@fortive.com
Paul	Hurdlow	FloSports, Inc.	Senior Vice President and General Counsel	paul.hurdlow@flosports.tv
Christina	Jay	E.R. Snell Contractor, Inc.	General Counsel	cjay@ersnell.com

Polina	Kostylev	3Red Partners LLC	General Counsel	pkostylev@3redpartners.com
Sarah	LaBarbara	Kloeckner Metals Corporation	Corporate Counsel	slabarbara@kloecknermetals.com
Mary	Langton	Randstad	Associate General Counsel and Assistant Vice President	mary.langton@randstadusa.com
Jason	Lee	Macy's, Inc.	Senior Counsel	jason.e.lee@macys.com
Sarah	Levy	American Bar Foundation	Director of Legal Affairs and Operations	slevy@abfn.org
Judy	Liao	Ford Green Wing, LLC dba Canvas	Senior Corporate Counsel	judy@drivecanvas.com
Kristin	Lingren	VSA Partners, Inc.	VP and General Counsel	klingren@vsapartners.com
Cynthia	Lohman	NRG Media, LLC	General Counsel & Dir. Hum. Resources	clohman@nrgmedia.com
Douglas	Luftman	Fintech Nomis Solutions	General Counsel	doug@luftman.com
Daniel	Macy	Homeside Financial, LLC	EVP General Counsel	dmacy@gohomeside.com
Raymond	Maier	Odyssey Logistics & Technology Corporation	General Counsel	rgmaier@odysseylogistics.com
Maura	McCaffery	EBI Consulting	General Counsel	mmccaffery@ebiconsulting.com
Steven	McGrew	Choctaw Global, LLC	Attorney	smcgrew@choctawglobal.com
Courtney	Menges	Varsity Tutors LLC	Senior Corporate Counsel	courtney.menges@varsitytutors.com
Donna	Meyer	National Committee for Quality Assurance	Deputy General Counsel	meyer@ncqa.org
Mark	Misaghi	Agile-1	General Counsel	misaghi@verizon.net
Darren	Misar	SIB Fixed Cost Reduction	General Counsel	dmisar@aboutsib.com
M. Yusuf	Mohamed	Tesla Motors, Inc.	Deputy General Counsel	ymohamed@tesla.com
Daniel	Moore	Jani-King International, Inc.	Senior Counsel	dmoore@janiking.com
Maria	Moskver	Covius	Chief Legal and Compliance Officer	mmoskver@cloudvirga.com
David	Munn	Pramata Corporation	General Counsel	david.munn@pramata.com
Douglas	Neu	Travelport LP	Group Vice President	douglas.neu@travelport.com
Vannie	Nguyen	Align Technology, Inc.	Counsel	vnguyen@aligntech.com
Olga	ODonnell	AccessLex Institute	Assistant General Counsel	oodonnell@accesslex.org
Brenda	Pence	Siemens Gamesa Renewable Energy, Inc.	Lead Counsel	brenda.pence@siemensgamesa.com
Julian	Peterson	Traditional Medicinals, Inc.	Corporate Counsel	JPeterson@tradmed.com
John	Pezzillo			jjpezzillo@yahoo.com
Deanna	Pickering		SVP General Counsel	deanna.pickering@vixxo.com
Hannah	Randolph-Haynes	Joerns Healthcare	Corporate Counsel and Compliance Manager	hannah.randolph@joerns.com
Michele	Richey	Honda North America, Inc.	Counsel	michele_richey@hmin.honda.com
Timothy	Rodenberger	Dahua Technology USA Inc.	General Counsel	tim.rodenberger@dahuatech.com
Robert	Royston	The Children's Hospital of Alabama	Legal Counsel/Risk Manager	robert.royston@childrensal.org
Carole	Rundle	The Interlock Group	General Counsel	crundle@interlockroofing.com
Matashi	Sakota	Global Advanced Metals	Corporate Counsel	msakota@globaladvancedmetals.com

Timothy	Seat	It Works Marketing, Inc.	General Counsel	tims@itworks.com
Scott	Sherman	RCI Management Services, Inc.	General Counsel	scott@rcimanagement.com
LaKeisha	Sisco-Beck, JD, RN	St. Jude Children's Research Hospital	Enterprise Risk Manager & Counsel	lakeisha.sisco-beck@stjude.org
Drew	Slabaugh	SERC Reliability Corporation	Legal Counsel	dslabaugh@serc1.org
Lauren	Sloane	Acquis Consulting Group	General Counsel	lsloane@acquisconsulting.com
Chevanniese	Smith	American Red Cross	Associate General Counsel	Chevanniese.Smith@redcross.org
Philip	Smith	Emera Maine	Corporate Counsel & Privacy Officer	philip.smith@emeramaine.com
Jeffrey	Spector	Sodexo, Inc.	Assistant General Counsel	jeffrey.spector@sodexo.com
Mark	Stuhlmiller	Aleron	General Counsel	stuhlmillerm@aleroninc.com
Miyun	Sung	Urstadt Biddle Properties Inc.	SVP, Chief Legal Officer & Secretary	msung@ubproperties.com
Susan	Tahernia	Attorney	Counsel	stahernia@aol.com
Jason	Van Volkenburgh	Hunter Douglas, Inc.	Vice President & Associate General Counsel	jason.vanvolkenburgh@hunterdouglas.com
Lee	Weiner	Razorsight Corporation	Corporate Counsel	lweiner@lweiner.com
Ruby	Yeh	Logix Federal Credit Union	HR Manager	ryeh@lfcu.com
Kathryn	Zeltwanger	Armstrong Group of Companies	Associate General Counsel	kzeltwanger@agoc.com

ELLN SUBCOMMITTEE REPORTS

May 1, 2019

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

May 1, 2019

***POLICY* Subcommittee Report**

Co-Chairs: Greg Watchman (Freddie Mac), Jennifer Harper (DC Water & Sewer Authority), Colleen Higgins Schultz (Texas Instruments), Ryan Brown (Rosetta Stone)

Two recent developments:

1. The EEOC's Sept 30 deadline for pay data submissions
2. The Supreme Court's arbitration ruling in *Lamps Plus v Varela*

May 1, 2019

ERISA Subcommittee Report

Co-Chairs: Ron Peppe (Canam Steel Corp.), Mark Burgreen (Marriott)

• **Background**

- In a recent Delaware Court of Chancery decision (April 3, 2019), [*Batty v. UCAR International, Inc.*](#), the Court denied the defendant/company's motion to dismiss because the severance agreement's provisions regarding the treatment of incentive compensation were ambiguous.
- The employee resigned for good reason in 2017 following a change in control, which triggered severance rights under his severance agreement. The company paid over \$1M in severance; but the employee filed suit seeking an additional \$1.5M in "accrued" equity awards (Although the opinion isn't clear, I assume this means the value of unvested, outstanding equity awards that would otherwise have been forfeited on termination).
- The severance agreement provided that he was entitled to (a) "accrued Incentive Compensation" and (b) 2x the greater of his "target variable compensation payment" in the year or termination or the year of the change in control.
- For the accrued Incentive Compensation--
 - The company argued that this only included cash incentive compensation; the employee argued it included equity too.
 - The agreement defined "Incentive Compensation" as "any compensation, variable compensation, bonus, benefit or award *paid or payable in cash* under an Incentive Compensation Plan."
 - The company said paid or payable in cash modifies all preceding nouns (compensation, variable compensation, bonus, benefit and award) or, at a minimum, it modifies the nearest noun (award) and all equity grants are "awards" and thus subject to the cash limitation.
 - The Court noted that this interpretation was reasonable. However, they also found it reasonable that "Incentive Compensation" could mean that "compensation, variable compensation, bonus, benefit" may be paid in cash or equity and one item, award, is only paid or payable in cash. Thus, equity awards could be included in accrued incentive Compensation.
 - The Court denied the company's motion to dismiss the employee's claims under the provision because it could not choose between two reasonable interpretations of an ambiguous provision.
- As to whether the target variable compensation payment includes equity, the court concluded it should be interpreted consistent with the accrued Incentive Compensation provision; therefore, it was ambiguous too and the company's motion to dismiss the employee's claims under that provisions were also denied.

• **Takeaways**

- I couldn't obtain a copy of the severance agreement from the docket, but this was clearly a mess caused by careless and overly complicated drafting. I think the company honestly meant cash only, but as a compensation lawyer I can say that the terms incentive and variable compensation are broad enough to cover both cash and equity.
- When drafting severance arrangements, employers should be careful to address (and probably specifically list) all elements of compensation to be paid to the former

employee. Put in specific dollar amounts if you have them. I've been burned on this- I thought my formula was clear, and then I got challenged on the amount.

- If you need help on how to specifically phrase the treatment of equity and cash incentive compensation in a severance arrangement, it may be worth a quick review by your in-house compensation lawyer or outside counsel.

ASSOCIATION OF CORPORATE COUNSEL EMPLOYMENT & LABOR LAW NETWORK

May 1, 2019

Traditional Labor Subcommittee Report

Co-Chairs: Darryl Uffelmann, Derek Lipscombe, Micah Heilbrun, Kevin Chapman

1. NLRB reverses precedent and clarifies obligations of successor employer.

In *Ridgewood Health Care Center, Inc.*, 367 NLRB 110 (2019), the Board took the opportunity to clarify the obligations of companies that purchase ongoing enterprises that have existing union-represented employees. The “successorship” doctrine has undergone some swings over the years, but the new decision provides reasonably clear rules.

If the new employer hires less than half the new staff from the old staff's bargaining unit employees, then it's not a successor at all, and has no obligation to recognize or bargain with the union until such time as the employees in the unit vote to become represented through the usual process. This has been the rule for decades and the *Ridgewood Healthcare* decision does not change it.

If the new employer's new union-eligible (non-supervisory) workforce is made up of a majority of workers (more than 50%) who were previously represented by the union at the predecessor, then the new employer is deemed a “successor” to the relationship and must recognize the union as the presumptive representative of the employees in the unit. But, a “successor” employer can set the initial terms and conditions of employment offered to employees as part of the transition. The workers can accept or reject the jobs offered under the new terms and conditions. Then, the union can negotiate a first contract with the new employer, but until a new agreement is reached the initial terms and conditions of employment remain in effect. *NLRB v. Burns Security Services, inc.*, 406 US 272 (1972), *Fall River Dyeing & Finishing Corp.*, 482 US 27 (1987).

But, the new employer cannot refuse to hire some employees of the predecessor company specifically in order to keep the number of hires under the 50% *Burns Security* threshold for being deemed a successor employer. To do so would be unlawful discrimination against the job applicants based on their union affiliation. *Downtown Hartford YMCA*, 349 NLRB 960, 984 (2007). This rule seems obvious – otherwise a new employer could easily avoid being deemed a successor by capping at 49% the number of employees it would hire who were previously employed by the former employer. The Board has made clear that refusing to hire the existing workforce to carry on the operation after acquisition in order to avoid being a successor is unlawful.

If the new employer hires all (or substantially all) of the new staff from the old unit, then it's a “perfectly clear” successor -- and obligated to not only recognize the union as the representative of the employees, but also to apply the terms of the existing CBA. The “perfectly clear” successor must bargain with the union before making changes, including setting the “initial” terms and conditions of employment for the “new” unit. The “perfectly clear” successor doctrine evolved from dictum in the Supreme Court's *Burns Security* decision, and it has been established at the Board level for decades. (*Spruce Up Corp.*, 209 NLRB 194 (1974)). Again, the *Ridgewood Healthcare* decision does not change this rule.

Where the Board injected ambiguity into the situation was over the remedy to be imposed when an acquiring company *does* refuse to hire some of the predecessor's employees for unlawful reasons. In *Love's Barbeque*, 245 NLRB 78 (1979), the Board held that where the new employer actively discriminated against all the former employees (by keeping secret the fact that it was hiring new employees), making it impossible to determine whether the new employer would have hired all or substantially all of its new employees from the predecessor's workforce in the absence of its unlawful discriminatory intent, the Board would impose a remedy of deeming the new employer to be not only a successor, but a “perfectly clear” successor and retroactively imposing the terms of the former CBA pending new negotiations with the union. This is a harsh penalty, but was justified by the new employer's active discrimination against all the former employees. The Board, however, expanded this remedial doctrine in *Galloway School Lines*, 321 NLRB 1422 (1996), holding that if the successor employer discriminates in hiring as to *any* of the predecessor's employees, then the Board would effectively presume that it discriminated against all hires and would impose a “perfectly clear” successorship obligation on the offending company – even where the new workforce included a

significant number of employees who were not part of the predecessor workforce and who would have been hired even absent the discrimination.

The Board in the *Ridgewood Healthcare* decision overruled the *Galloway* precedent and leaves the law in a more logical state:

If the new employer hires more than 50%, but less than substantially all, of its workers from the predecessor's unit, then it's a successor, but not a "perfectly clear" successor, and can set initial terms and conditions without prior bargaining. If the new employer refuses to hire some former unit members (e.g., in an attempt to avoid being a successor at all by keeping the number of former unit members under 50% of the new hires), then it's an unfair labor practice and the remedy is to deem the new employer to be a "successor" and impose a standard successor bargaining obligation. But, the remedy for that ULP is not to deem the new employer a "perfectly clear" successor. Such an extreme remedy is reserved only for the rare case where "all or substantially all" of the not-hired employees were discriminated against such that, in the absence of the discrimination, the new employer would have been a "perfectly clear" successor. Thus, you can't avoid being a perfectly clear successor by refusing to hire a few members of the former unit (without good reason). But, where the new employer would not have been a "perfectly clear" even absent the unlawful refusals to hire some of the former unit members, the Board will not impose the *Love's Barbeque* remedy, although the individual employees who were unlawfully not hired will be eligible for reinstatement and back pay.

The advice to acquiring companies is to make sure that you have a sound business reason for bringing in new employees and not hiring the former employees.

2. Board refuses to require disclosure of financial records – but just barely.

In labor negotiations, the union can ask for information and documents that are necessary to collective bargaining. But, unions cannot normally use a bargaining-table information request to discover confidential business information or the company's financial records. The union cannot make the argument "see, the company has plenty of money and we want some of it," except based on publicly available information. But, at the bargaining table, negotiators must carefully avoid making statements that would "open the door" for the union to demand such financial records. A company that pleads poverty or lack of profitability as the basis for making its own proposal, or rejecting the union's proposal, may be required to "prove it" by opening up its books.

In *PSAV Presentation Services*, 367 NLRB No. 130 (2019), the company's chief spokesperson responded to a union's wage proposal by stating the company would not agree to it because, among other things, it would be "suicide" for the employer. The union claimed this comment was tantamount to the company claiming an inability to pay and requested the employer's general financial information. The company responded by clarifying, in writing, that it was unwilling to agree to the union's wage proposals but not claiming it was fiscally unable to pay. The union nevertheless pressed its demand for financial disclosure, and when the company refused, the union filed unfair labor practice charges.

The NLRB ultimately found the company did not have to provide general financial information to the union because it effectively retracted any statements that could have been construed as claiming an inability to pay, but not before extensive litigation and a loss of bargaining table leverage. This case shows the importance for employers to tread carefully when they receive information requests and to be mindful of statements they make at the bargaining table.

3. Swearing about clients in the bathroom is not protected activity.

The NLRB often gives employees substantial leeway in making strident comments and using colorful language when discussing workplace issues, and frowns upon an employer who fires a union activist or employee leader based on misconduct related to such comments. While the line of demarcation between what is protected activity and what is not can sometimes be blurry, the Board added a little clarity in *Quicken Loans*, ___ NLRB No. ___ (April 10, 2019). Here, a mortgage broker was in the public restroom talking to a coworker and complaining about a client who was calling him rather than reaching out to a subordinate client specialist. He stated that the client should “get in touch with the F***king client specialist and quit wasting his F***ing time.” The comment was overheard by a supervisor. After an investigation, the co-worker who was present for the comment was fired because he lied about the incident and because he had a history of other workplace issues. The discharged employee went to the NLRB, asserting that the comment between two coworkers was related to terms and conditions of employment (here, their relationship with a client) and therefore was protected. The Board disagreed, finding that the comment had no relationship to concerted activity and that there was no evidence that employees as a group had any issues with having client calls routed to them, even when they didn’t want to deal with the calls. This was a personal complaint, not a call for group action. Therefore, it was not protected concerted activity. Here, again, the company was successful, but only after substantial litigation.

4. Board issues advice re: issuing complaints where charged party fails to fully cooperate.

In GC Memorandum [19-05](#), issued by the NLRB Division of Operations Management of the Office of the General Counsel in March 2019, the Board gives Regional Directors a new tool to expedite cases when a charged party fails to cooperate with an unfair labor practice (ULP) investigation. Instead of relying on investigative subpoenas to acquire additional information, Regional Directors may issue complaints based on “evidence available.” The new authorization is designed to reduce case processing time consistent with the General Counsel’s major objectives as described in the December 2018 memorandum, [GC 19-02](#).

Under the terms of memorandum 19-05, if a charged party fails to fully cooperate in a ULP administrative investigation, Regional Directors have the discretionary authority to determine 1) whether to issue a complaint based on evidence available, and 2) whether the failure to cooperate is significant. A significant lack of cooperation is described as including a complete failure to respond or a failure to provide “key information.” It would not include “failures to produce a witness or witnesses where credibility disputes may dictate the issuance of a complaint.” A determination of a significant lack of cooperation will be factually dependent and may take into consideration the severity of the ULP allegations as well as the impact on commerce.

As always, a charged party must weigh the value of working with the Region to adequately comply with requests for information while also protecting client information that may be sensitive or beyond the scope of the ULP charges against the consequences of having a complaint filed based on a determination of lack of significant cooperation.

5. Circuit Court of Appeals upholds quickie election process.

In *UPS Ground Freight Inc v. NLRB*, U.S. Court of Appeals for the D.C. Circuit, No. 18-1161 (April 22, 2019), the D. C. Circuit court of appeals rejected a challenge by UPS to a union election in favor of a Teamsters local that organized a group of UPS drivers over the company’s objections that the new expedited election procedures violated the company’s due process rights. The court found that, although the company had only a week to prepare for the pre-election hearing, there was ample time to file objections and that after the vote the company had a full opportunity to challenge the makeup of the bargaining unit.

APPENDIX F – ELLN NETWORK CHARTER
(Updated May 2018)

EMPLOYMENT & LABOR LAW NETWORK (ELLN)

NETWORK CHARTER

[Updated May 2018]

I. MISSION STATEMENT

The mission and purpose of the Employment Labor and Law Network (hereinafter the “ELLN” or “Network”) shall be to act as a central resource vehicle and networking destination for all ACC members with an interest in, or need for guidance concerning, employment, labor and benefits law matters.

II. NETWORK LEADERSHIP STRUCTURE

The Network leadership shall consist of the Network’s Leadership Committee, consisting of officers and the appointed chairs or co-chairs of the below referenced Subcommittees and Focus Areas.

Leadership Committee

The Leadership Committee shall consist of the Leadership Committee Officers, Subcommittee and Focus Area Chairs or Co-Chairs, and the Immediate Past Chair of the Network, along with such other members of the Network as may be invited by the Chair. The role of the Leadership Committee is to lead and coordinate the efforts and activities of the Subcommittees and Focus Areas and the Network at large, provide a central organizational and administrative function, and establish a common vision for the Network. The Leadership Committee shall meet in person or by teleconference at twice per year.

Leadership Committee Officers

The officers of the Leadership Committee shall be elected from the Network’s membership and shall consist of a Chair, Vice Chair, and Secretary; however, any one or more of the offices may be jointly held as Co-Chairs or multiple Vice Chairs.

Subcommittees and Focus Areas

The activities of the Network Leadership Committee will include both administrative Subcommittees and Focus Areas. Administrative Subcommittees will carry out the organizational tasks of the Network and the Leadership Committee, while the Focus Areas will monitor and provide substantive discussion, materials, resources, and networking opportunities for Network members in the subject matter of each Focus Area.

Each of the Subcommittees and Focus Areas shall have a chair or co-chairs appointed by the Chair of the Network. The Subcommittee and Focus Area chairs and or co-chairs are responsible for carrying out tasks and functions of their group and enlisting the assistance of other ELLN members and ACC professional staff. Each Subcommittee and Focus Area shall maintain a “mission statement” summarizing its purpose and expectations, which shall be updated periodically. The current Subcommittee and Focus Areas mission statements are as follows:

Communications Subcommittee. The Communications Subcommittee of the Employment & Labor Law Network is devoted to communications with members about upcoming events and publicizing important Network activities. The Communications Subcommittee is primarily responsible for publication of a bi-monthly newsletter to members and will solicit and edit materials from all Focus Areas to provide a concise update to members that includes upcoming events, lists of available resources, and summaries of recent reports on developments in the law.

InfoPAKs Subcommittee. The InfoPAKs Subcommittee of the Employment & Labor Law Network develops succinct and high-level overviews, summaries, surveys and primers on topics of interest to the membership. The subject matter of an InfoPAK could be focused on a single topic such as wage and hour, or non-competes, or it could span the full spectrum of labor and employment law specific to a particular country such as Canadian Labour and Employment Law. Depending on the content, development of an InfoPAK may involve working with the Co-Chairs of other Focus Areas that cover the substantive topic area. What distinguishes InfoPAKs from other ELLN resources is the comprehensive and in-depth treatment of the subject matter covered in an Info PAK. The InfoPAKs Subcommittee partners closely with multiple law firms to accomplish this goal. The InfoPAKs Subcommittee Co-Chairs, in conjunction with ACC and the law firm, assist in the preparation of the outline for the InfoPAK and, once submitted in draft form, review the Info PAK and provide substantive input, feedback and comments to the authors. The Co-Chairs also track progress against pre-determined milestones and provide reports on these timetables and deadlines at monthly ACC meetings. ELLN members are encouraged to share their topic ideas, and Network members are welcome to participate in making substantive contributions to an Info PAK.

Membership Subcommittee. The membership Subcommittee of the Employment & Labor Law Network is responsible for outreach to new members and efforts to increase membership and awareness of the Network's activities. The membership Subcommittee contacts all new members with information about Network activities and upcoming programs and also works with the ACC headquarters staff on outreach efforts to encourage ACC members to also become members of the Employment & Labor Law Network.

Policy Subcommittee. The ELLN Policy Subcommittee's mission is to **inform** ACC members of emerging employment law developments, to **advocate** for members in the most significant employment law court cases and rulemakings, and to **connect** ELLN members to federal policymakers. The Subcommittee keeps members informed through oral reports on the ELLN's monthly calls, a written summary of the reports posted on the ELLN's webpage, and issue-specific memoranda made available to members. The Subcommittee advocates for members on employment law issues of national significance by submitting amicus briefs in employment cases and written comments in federal regulatory proceedings. Finally, the Subcommittee connects ELLN members with federal policymakers through a series of Washington D.C.-based meetings with EEOC Commissioners, NLRB members, and Department of Labor officials.

Programs Subcommittee. The mission of the Programs Subcommittee is to ensure that the ELLN's presentations at the ACC Annual Meeting effectively address important trending labor and employment (L&E) issues for a variety of in-house practitioners, including those who are L&E specialists, those with general practices that require them to have basic knowledge of and familiarity with key L&E issues, and those with L&E responsibilities that are international in scope. Our responsibilities and activities include: (1) soliciting and submitting proposals for the ELLN's Annual Meeting presentations on labor and employment issues; (2) putting together excellent panels for these presentations; and (3) assisting our panels in developing and

delivering stellar presentations. We look for opportunities to submit presentations in partnership with other ACC Networks, and we welcome input from all members of the ELLN community.

Webcasts Subcommittee. The Webcast Subcommittee of the Employment & Labor Law Network provides 60-90 minute webcasts on timely employment and labor-related legal topics to in-house counsel. The Webcast Subcommittee works closely with Jackson Lewis and other law firms to accomplish this goal. The Webcast Subcommittee co-chairs review and select webcast topics, secure outside counsel partnership for webcasts, and serve as liaisons between ACC and the webcast presenters. The co-chairs also track webcast topics and attendance and provide reports on these data points and on upcoming webcasts at monthly ACC meetings. We encourage ELLN members to share their topic ideas, and we welcome participation from any Network members interested in moderating a webcast.

Absence and Disability Management Focus Area. The mission of the Absence & Disability Management Focus Area (A&D) is to provide value to ACC members on a variety of legal issues related to employers' efforts to effectively, and lawfully, manage attendance and accommodations. We are aware that absence and accommodation issues are among the most vexing for HR, and that the legal requirements for absence and disability change at a rapid rate through both judicial interpretation of the FMLA and ADA as well as legislation adopted by very active state and local legislative bodies. Our goal is to educate ACC members about relevant legal requirements and to provide practical solutions and suggestions to help them comply. This includes hosting monthly calls for interested ACC members to discuss challenging A&D issues and exploring other innovative ways that we can provide value to ACC members.

ERISA Focus Area. The ERISA Focus Area of the Employment & Labor Law Network is charged with monitoring and reporting on important developments in the area of employee benefits and other ERISA-related topics. The ERISA Focus Area will work with the Webcasts and InfoPAKs Subcommittees to develop programs and targeted resources and will report to the broader Network on breaking news and impending regulatory changes, including tax issues that affect employment lawyers.

Health & Safety Focus Area. The Health & Safety Focus Area of the Employment & Labor Law Network is charged with monitoring and reporting on important developments in Health & Safety law, including OSHA regulatory and compliance issues, and alerting ELLN members to important requirements or impending regulatory changes. The Health & Safety Focus Area will work closely with the Webcasts and InfoPAKs Subcommittees on substantive programs and materials.

International Focus Area. The international Focus Area seeks to broaden the scope of ELLN beyond the US borders and raise awareness of and provide resources on global employment law issues. We do this by organizing webinars, reviewing and suggesting international materials for inclusion on the ACC website including InfoPAKs, and advocating to incorporate international employment law topics at ACC meetings. Whether the subject is a sexual harassment claim in India, a request from the VP of HR to implement a global RIF, or a demand from the VP of Sales to hire independent contractors in Germany, our mission is to provide support and resources for the harried in-house counsel.

Labor Focus Area. Labor Focus Area members identify and track the most pressing labor law issues, case law developments, emerging trends and provide practical advice to the ELLN

through oral and written reports during the monthly Network conference calls. Written reports are posted on the ELLN web page. Members of the Focus Area are available to facilitate educational programs and to serve as a resource on traditional labor law topics for colleagues advising both union and non-union workforces. Active membership in the Focus Area is not only a way to learn about current labor issues and how they impact both union and non-union employers, but also to meet other in-house labor counsel and to share best practices.

Library/Archives Task Force. The newly formed Libraries/Archives Task Force is charged with working with ACC headquarters employees to help improve the organization and delivery of valuable resources to ACC members. The goal is to organize the employment-related resources already in the ACC library, make them easier to find and access, and identify holes in the library that can be filled by future calls for forms and templates, future InfoPAKs, or other means. The task force will also provide ongoing assistance and support for the ACC librarians by helping to tag and code new resources as they come in for maximum visibility and usefulness.

III. LEADERSHIP RESPONSIBILITIES

The Chair, the Vice-Chair, and the Secretary of the Leadership Committee shall each serve a term of one year, with the eligibility to be elected to no more than two consecutive terms, The Chair is succeeded typically by the Vice Chair who shall be succeeded typically by the Secretary. In addition to the responsibilities he/she shares with other members of the Leadership Committee, the Chair acts as the principal contact between the Network, ACC leadership, the ACC headquarters office and ACC local chapters; provided that the Chair shall have the right to delegate to such other ELLN member(s), as he/she shall determine, any of his/her responsibilities as Chair. The Vice Chair shall perform such duties as requested by the Chair and in the Chair's absence shall perform the responsibilities of the Chair. The Secretary shall be responsible for working with ACC staff to ensure timely notice of teleconference meetings of the Leadership Committee and any Network meetings, as well as, preparing any minutes of such meetings. ACC staff will work with the Chair to develop and circulate the agenda for such teleconferences and meetings. The Chairs of the Subcommittees and Focus Areas shall be appointed by the Chair of the Network to serve for a term of one year, which may be renewed at the discretion of the Chair for additional one year terms without limitation. Focus Area and Subcommittee Chairs shall be responsible for coordinating the activities of their groups, and representing their groups at meetings of the Leadership Committee.

IV. MEMBERSHIP

Membership in the Network is open to all members of ACC. Members of the Network are encouraged to join and actively participate in at least one Subcommittee and/or Focus Area. The general membership of the Network will convene once per year for an annual meeting to be held in connection with ACC's Annual Meeting and this meeting shall be presided over by the Network Chair and Leadership Committee for the purpose of conducting general Network business, electing officers (Chair, Vice Chair, and Secretary) and developing initiatives for the following year.

V. OPERATING OBJECTIVES

The ELLN shall work closely with ACC Staff to advance the goals of ACC and to comply with the minimum activity guidelines for the national Networks. The ELLN will use its best efforts to accomplish the following:

- (1) Plan and conduct a monthly meeting via teleconference, during which the Network will present at least one substantive discussion of an issue of importance to the membership, and during which Subcommittees and Focus Areas will report on significant developments in their areas and will, as appropriate, provide a written report to be attached to the minutes of the monthly meeting.
- (2) Plan and conduct a substantive program series each year at ACC's Annual Meeting.
- (3) Plan and conduct webcasts, at least four per year, on substantive employment, ERISA or labor law topics and issues.
- (4) Submit at least one ELLN-sponsored article every year for publication in the ACC Docket.
- (5) Consistent with ELLN advocacy objectives, periodically submit comments to federal regulatory agencies and other government entities as deemed appropriate by the Leadership Committee.
- (6) Encourage leaders and members to actively participate in discussions on the eGroups forum in order to provide helpful information to ACC members on topics related to employment and labor law, and periodically disseminate information and materials of general interest to ELLN members.
- (7) Encourage new membership and active participation in all ELLN events and in ACC.
- (8) Develop and maintain productive working relationships with chapter presidents, other national Networks, the ACC's Board of Directors, and ACC staff.

VI. ADVOCACY OBJECTIVES

Consistent with the advocacy guidelines adopted by the Association's Board of Directors and its delegation to the ELLN of Authority to engage in Advocacy Activities incorporated herein by reference, the ELLN may provide substantive input and comment on major legislative and regulatory initiatives, as well as *amicus* briefs in significant pending cases, having broad impact on ACC member employers. While the ELLN recognizes that not all such advocacy will represent the unanimous views of its membership, such input will be tailored to express the Leadership Committee's perception of the consensus views of ELLN members and member employers/clients. The Leadership Committee will have final discretionary authority over the editorial content of any ELLN advocacy undertakings. At the sole discretion of the Leadership Committee, alternate input or views not inconsistent with the ELLN's adopted position may also be incorporated into any final advocacy statement. The Leadership Committee will post promptly on the Network website any submitted and or published comments and other such formal written advocacy as may be undertaken by the ELLN.

VII. RESIGNATION / VACANCY

In the event of resignation or other vacancy of any officer prior to the completion of his/her term of office, the highest-ranking officer has the authority to appoint a replacement from the Network membership to serve the remainder of the term. Should the Chair resign mid-term, the Vice Chair has the option of succeeding to the role of Chair. Focus Area and Subcommittee chairs can be replaced by the Chair, failing which a new Chair can be appointed from the Network membership by the Chair of the Council of Networks.

VII. REMOVAL FROM OFFICE

Failure of an officer to meet the responsibilities set forth in the Network Charter and/or failure to comply with ACC policies and procedures may result in removal from office in accordance with the following procedure: (1) By unanimous agreement of the Officers of the Leadership Committee (other than the officer being removed) and a majority consent of the entire Leadership Committee; or (2) by the ACC Council of Network Leaders Executive officers by a majority vote.

IX. AMENDMENTS

This Charter may be amended at any time by majority vote of Network members in attendance at the Network business meeting at the ACC Annual Meeting or at any regularly scheduled Network teleconference. All proposed amendments to this Charter must be approved by the Services Network of the ACC Board of Directors prior to implementation.

X. INTELLECTUAL PROPERTY

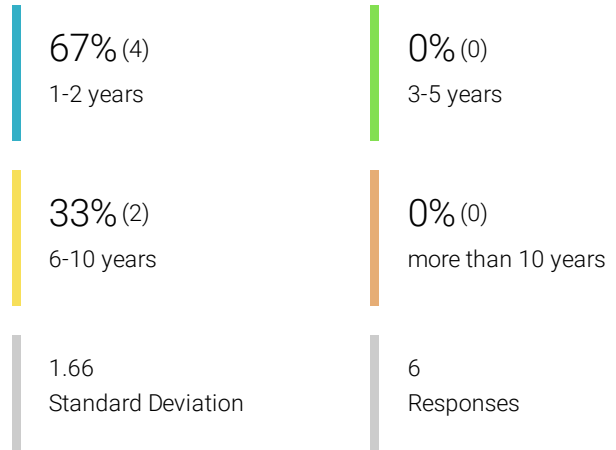
The Network shall only use such logo displaying the name of the Network or other ACC intellectual property as approved by ACC.

APPENDIX G – ELLN MENTORSHIP PROGRAM EVALUATION

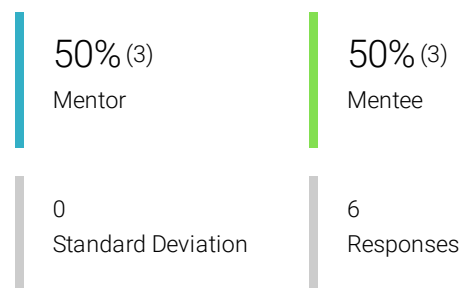
Employment and Labor Law

Please fill out the quick survey below regarding your participation in the Employment and Labor Law Network Mentorship Program.

1 Information: I have been a member of ACC's Employment and Labor Law Network for:



In 2017, I participated in the ELLN Mentorship program as a:



2 Evaluation of 2017 Program:A. In the 2017 mentorship program with ELLN, I had the following contacts with mentor/ mentee:

4

5 - 10

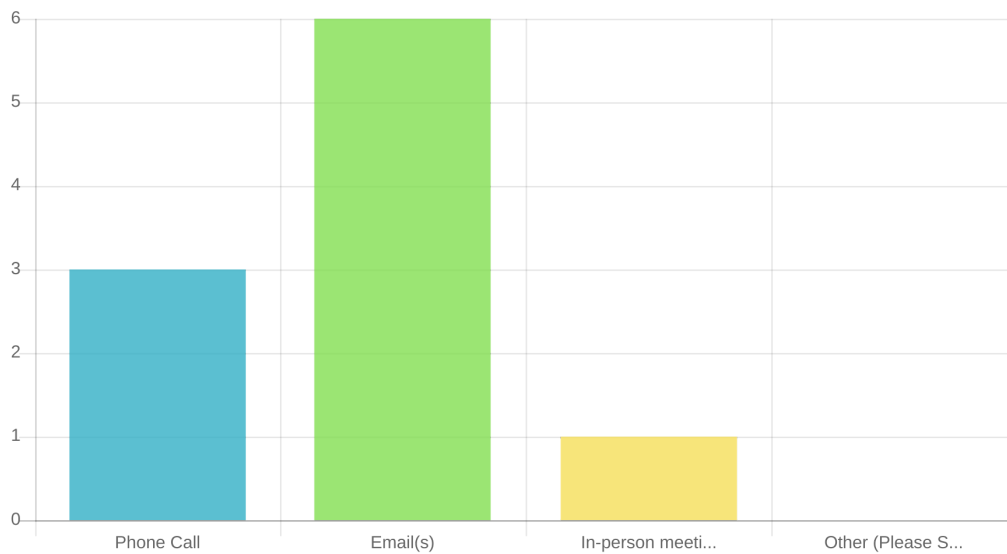
1

Approximately 4, I spoke to my mentee on the phone and then emailed her multiple times to set up time to meet in person, but she was not very responsive.

3

3-5

Type of contacts (please check all that apply):



50% (3)
Phone Call



100% (6)
Email(s)



17% (1)
In-person meeting

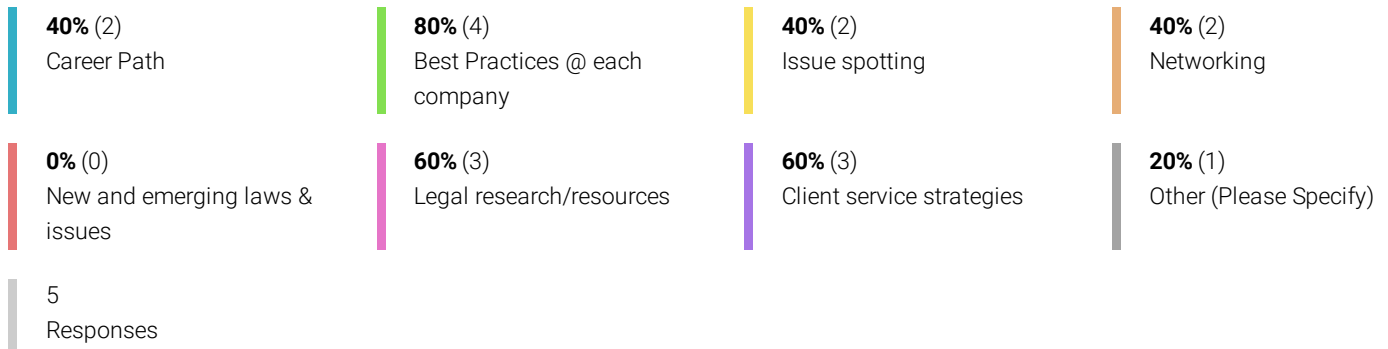
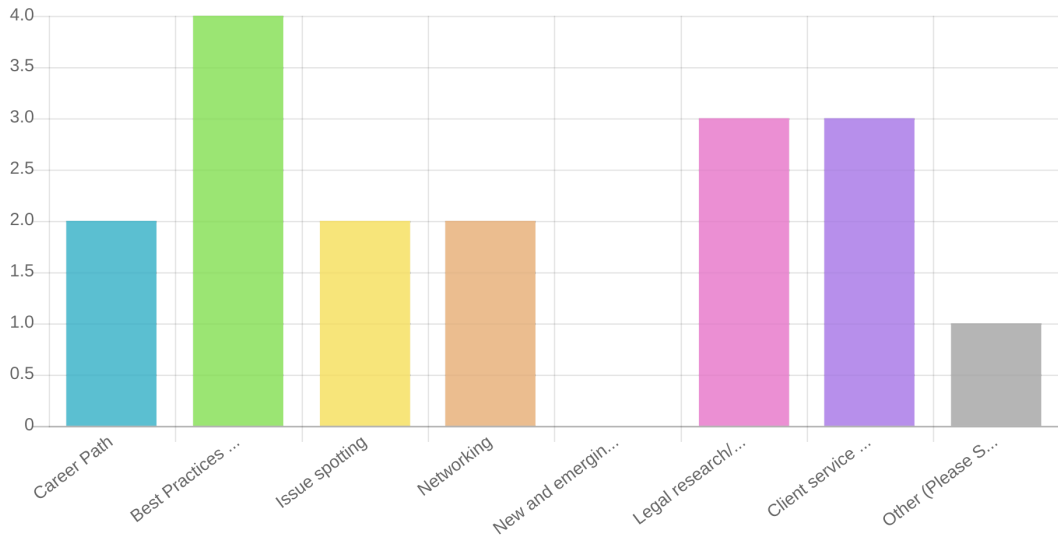


0% (0)
Other (Please Specify)



6
Responses

B. In contacts with my mentee/ mentor, we discussed these topics (check all that apply):

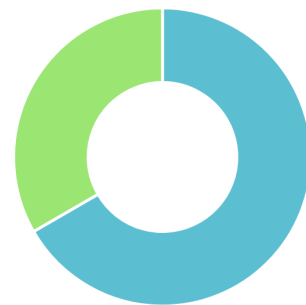


general in-house practice issues

C. I found participating in the ELLN mentorship program to be valuable:



D. Are you willing to serve as a mentor for future programs?



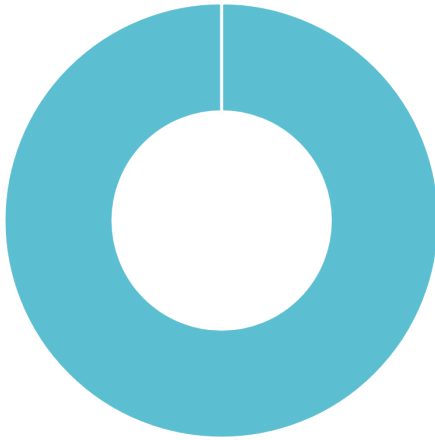
1
Standard Deviation

6
Responses

1
Standard Deviation

6
Responses

E. Should ELLN continue with a mentorship program in the future?



100% (6)
Yes

0% (0)
No

3
Standard Deviation

6
Responses

Please feel free to provide any additional comments on the program below:

I would make the duration of the program longer. I think I had 3 months or so with the program, and it wasn't enough time to establish a relationship. I am not sure if I can contact my mentor now that the program has ended. I would like to participate again as a mentee.

Greg Watchman is an excellent mentor and person. He helped me network at ACC events, and ease my struggles that an inexperienced attorney struggles with in their first job.

After initial introduction type emails, mentee never responded to further attempts to contact

level of contact dependent on the mentee. In my case, not that much interest.

3 If you are willing to serve as a mentor in the future please fill out the information below:

Cecilia

616-633-2933

ctran@eagle.org

Meredith Stone

252-347-5739

mbstone18@gmail.com

Amy Burke

781-737-3130

amy.burke@dunkinbrands.com

Kevin Chapman

609 520-4106