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FOCUS

President's Message

Justin Carlson

Greetings from the start of summer! As I write this article, jets are flying over my home in preparation for Miami's annual Air & Sea Show as part of the Memorial Day holiday. This is a holiday dedicated to the acknowledgment of military service and sacrifice, remembering those who gave their lives in the line of duty. In the spirit of the holiday, I'd also like to acknowledge civil servants including police, firefighters, medical professionals, and especially teachers, all of whom sacrifice for demanding professions that make a real difference in individual lives and for the good of our society, and many of whom have also given their lives in the course of their service.

A subset of our profession also puts themselves at risk, including judges, prosecutors, and the many public service attorneys protecting human rights and helping people in challenging settings. As in-house counsel, we can feel somewhat removed from the justice system or other riskier parts of our profession, but organizations like the ACC give us the opportunity to voice concerns over issues like the abhorrent violence against judges and their families.

The ACC-SFL plays its own very small part in facilitating pro bono and community service opportunities for its members. From beach cleanups in Fort Lauderdale to free school supplies for Dade and Broward teachers to helping the Hutchinson Island marine ecology by promoting oyster growth, our members have helped the local community in a number of ways.

Our upcoming pro bono opportunity with Legal Services of Greater Miami on June 25 is the latest in a series of engagements where our members have been able to provide landlord/tenant counseling, help set up small businesses, handle legal name changes or set up guardian ad litem relationships, among other much needed pro bono counseling to clients who cannot afford legal representation.

Memorial Day is also the "unofficial" start of summer (meteorologists would tell you the official start is the summer equinox on June 21). Those of us who live in this land of eternal summer may not appreciate the pool opening and closing bookmarks that Memorial and Labor Day represent to our neighbors to the north, but the arrival of summer has some hallmarks which transcend regional norms: the kids are out of school, the summer travel season begins, concerts and music festivals are in high gear. All three of the holidays (Memorial Day, Independence Day, and Labor Day) are built around barbeques and being outdoors.

While I hope everyone is able to take at least some time this summer to disconnect, relax and recharge, just a reminder that the ACC-SFL will continue with programming (albeit a lighter schedule) through the summer, and will hit the ground running with our signature program just after summer unofficially ends on Labor Day: our annual CLE Conference on Thursday, September 12. The theme of the conference is Jurassic Justice: Navigating the Legal Landscape



in the Corporate World. Ditch the suit and channel your inner Alan Grant or Dr. Sadler, or just celebrate the love many of us once held (or still do hold) for dinosaurs while learning from and about our wonderful sponsors.

Before then, we will have the aforementioned pro bono clinic in Miami, as well as another women-focused event on July 16, and a social event still to be announced in August. If you are not off globetrotting, please join us at any or all of these events. Details still to come.

The leadup to our CLE conference is a great time for you to speak to other in-house counsel in your networks who may not be a part of ACC-SFL. We are always looking to welcome new members and ask for your help in spreading the word and sharing your experience. I hope you have a safe, enjoyable, and rejuvenating summer and look forward to seeing you at our events!

Employment Law Continues to Evolve: Ten Trends To Track

By Megan L. Janes and Jennifer B. Sandberg of Fisher Phillips

As you craft your workplace culture and policies, you'll find many opportunities for change in 2024. Here are ten trends to track as you revisit payroll, update handbooks, and more.

1. Artificial Intelligence

Advances in artificial intelligence have already made a huge impact on the workplace. AI tools can perform valuable tasks like predicting periods of high overtime and optimizing schedules. Yet, many are concerned that AI in the workplace may foster discrimination. Colorado passed an AI bill in May. Our nation's Congress, as well as New York and California, are exploring legislation. The EEOC's enforcement initiative regarding fairness in AI is well underway.

2. Pay Transparency

Colorado was the first state to enact a pay transparency law in 2021 and other jurisdictions followed suit, including Rhode Island, New York, Hawaii, and Illinois. This issue affects all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits. A patchwork of new state laws makes multistate compliance complicated, particularly since the details of each law vary.

Failure to comply with state pay transparency laws has spawned costly class action litigation and complicated job postings.

3. Data Privacy Laws

Fifteen states, including California, Delaware, Connecticut, Florida, Iowa, Montana, Oregon, Tennessee, Texas, and Washington, have passed consumer privacy laws. There is a trend to exclude employment-related data from protection, but not all states have done so. For example, in California, such data is subject to the CCPA/CPRA requirements. Federal lawmakers are also considering passing the nation's first data privacy law.

4. Higher Exempt Salary Thresholds

In April, the U.S. Department of Labor announced a significant increase to the salary threshold for employees who are exempt from overtime pay under the executive, administrative, and professional exemptions. While some states have their own, higher exempt salary threshold, the current change increases the federal threshold from \$684 per week to \$844 per week on July 1 and \$1,128 on January 1, 2025. The thresholds are expected to update every three years and impact the highly compensated exemption as well. State laws may also change in response to the federal activity. The higher salary basis trend forces employers to revisit the classifications of their employees, engage in strategic planning to determine if they need to convert exempt employees to non-exempt, and consider what other wage and hour risks exist for their workforce.

5. Minimum Wage Hikes

Although the federal minimum wage has been \$7.25 an hour for the past 15 years, many states, counties, and cities have steadily increased their minimum hourly wage every year, with some reaching or exceeding \$15 an hour. Florida will reach that \$15 mark on September 30, 2026. Increasing minimum wages mean a greater cost to wage and hour errors and risky employee morale situations if increased minimum wages result in compressed pay scales.

6. Paid Sick Leave Laws

State and local paid sick leave requirements continue to raise compliance challenges. Currently, about a third of the states and Washington, D.C., have their own paid sick leave laws. Each jurisdiction has different requirements when it comes to the amount of time employees can take, the reasons they can take leave, the ways leave accrues, how leave carries over from year to year, and more. The

push for paid leave at the state and local level is expected to continue for the fore-seeable future given lack of action at the federal level. Employers need a game plan for tackling the complex issues that come with managing such policies and programs, particularly across multiple locations with unique requirements. Employers with "unlimited" PTO intended to cover state paid sick leave obligations have unique complexities and concerns.

7. Hairstyle Equity

Discrimination based on hairstyles is a part of everyday life for many Black adults, according to a study by the CROWN Coalition. "CROWN" stands for Creating a Respectful and Open World for Natural Hair. State legislatures are responding.

Twenty-three states have enacted a version of the CROWN Act, which prohibits employers from discriminating against employees and job applicants based on natural or protected hairstyles. Efforts are currently underway in more than a dozen states, including Arizona, Florida, Georgia, Pennsylvania, North Carolina, and South Carolina, to continue the trend of expanding protections against discrimination based on hairstyles.

8. Mandatory E-Verify Use

Florida has joined at least 21 other states that mandate the use of E-Verify for checking Form I-9 data against government databases to increase compliance with federal employment and immigration regulations.

With the upcoming release of E-Verify NextGen, which is intended to modernize the I-9 and employment verification process, we may see even more legislation related to work authorization status. Among other proposed features, employees will be able to enter their own information through a portal and notifications will be streamlined.

9. Bans on "Captive Audience Meetings"

Several states are impacting labor relations by banning "captive audience meetings." Some believe captive audience meetings coercively interfere with employee freedom of speech. For example, Minnesota, Connecticut, Maine, New York, Oregon and Washington have all passed legislation targeting captive audience meetings.

Nonetheless, those laws face a multitude of potential legal challenges since captive audience bans prevent employers from making a reasonable case as to why employees may not want to vote in favor of union organization.

10. Industry-Specific Requirements

Industry-specific employment laws are on the rise. For example, California rolled out a \$20 minimum wage for fast-food workers and new minimum wage requirements for most healthcare workers. New York City has special employment laws for fast-food workers. Is Florida next?

Conclusion

Staying informed on workplace trends is critical for compliance in 2024 and beyond. More than ever, we recommend the periodic review of handbooks, policies, and practices to ensure compliance with the latest requirements as well as consistent application within your workforce. If you have operations in mult risdictions, set standard practices across locations – or at least ensure fairness – while considering employee morale if policies vary by location.

Authors:

Megan Janes is a partner in Fisher Phillips Fort Lauderdale office. Megan enjoys representing employers of all sizes across several industries. Her day-to-day work often includes litigation



involving allegations of discrimination, denial of leave, wage and hour matters, or restrictive covenants, both at the administrative level and in court. Megan also assists employers with workplace matters, including counseling on ways to reduce the risk of litigation or conducting informative trainings on how to comply with employment laws. mjanes@fisherphillips.com | 954.847.4717

Jennifer Sandberg,

Regional Managing Partner of the Fisher Phillips Fort Lauderdale office, is a trusted advisor to employers, In-House Counsel, and HR professionals. She provides



solid business advice tailored to clients' needs, ensuring creative and cost-effective solutions. Jennifer focuses on efficient, business-oriented outcomes and offers day-to-day preventative advice for business initiatives. She delivers effective training for senior executives and managers on various employment topics, conducts legal compliance audits, and prepares employees handbooks and policies for multistate employers. jsandberg@fisherphillips.com | 404.240.4152

About Fisher Phillips. With almost 600 attorneys in 41 offices across the United States and Mexico, Fisher Phillips is an international labor and employment firm providing practical business solutions for employers' workplace legal problems. Labor and employment law is all the firm does, offering deep and broad knowledge and experience in the area of law the attorneys know best. Fisher Phillips attorneys help clients avoid legal problems, are dedicated to providing exceptional client service, and are there when you need them. www.fisherphillips.com

When Congress Calls: The Critical Need For Preparation

By Thomas J. Spulak, Kendrick B. Meek and Daniel F. Donovan of King & Spalding

Statistics show that the U.S. is passing legislation at a slower pace than in recent history. That, however, does not mean that Congress is not busy at work. One area where Congress is extremely active is in the area of congressional investigations. That is something that every corporate counsel should be following and most importantly, have an action plan in place if Congress ever shines its investigative light upon their industry.

Congressional committees have significant investigative powers, including the authority to issue subpoenas to compel the production of documents and witness testimony, giving oversight committees significantly more leverage in compelling cooperation from private-sector investigative targets.

Today, congressional committees are actively investigating the major industries operating in America today, including oil and gas, pharmaceutical and medical device manufacturers, transportation providers, utilities and the financial and technology sectors, among others.

Congress maintains that there are few limits on the scope of its own subpoena power. It has taken the position, for example, that common-law privileges recognized by the judicial branch—even

the attorney-client privilege—do not automatically afford protection from congressional investigations or contempt proceedings. Congress roots its position in Article I, § 5 of the Constitution, the Rulemaking Powers Clause, which provides that each House is the exclusive determiner of the rules of its own proceedings and are not bound by rules created by another branch of government.

Congressional investigations and inquiries cover a range of activities and requests, including letters from committees and/or Members requesting voluntary submissions of documents and/or

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information to questions; requests for staff or Member briefings by company employees; requests for witness interviews or depositions; committee subpoenas for documents and/or testimony; hearing requests for testimony by a CEO or other senior executives; and post-hearing questions for the record.

Because each House of Congress investigates pursuant to a constitutional grant of power, investigating committees are accustomed to weighing privilege assertions on a case-by-case basis. For example, a committee may determine whether an attorney-client privilege assertion should be respected by weighing the claimed injury against considerations of legislative need, public policy, and congressional prerogatives. As a practical matter, committees may respect valid attorney-client privilege assertions, though they may press for clarifying or narrowing the scope of the privilege claim as well as a privilege log.

The courts respect the broad sweep of congressional investigative powers and are generally reluctant to interfere in congressional investigations absent some clear Constitutional violation, a violation of its own rules by Congress itself, or the total absence of any legitimate legislative purpose. The broad scope of congressional investigative authority, coupled with judicial respect for the separation of powers, make it very difficult to convince a court that a particular inquiry exceeds congressional authority.

The broad oversight authorities available to congressional committees present both practical and legal challenges. First, the pace of congressional investigations can place intense demands on Company time, resources, and personnel. Second, there are few, if any, limits on the scope of an investigation, which makes it difficult to anticipate every issue that might be raised. Third, unlike in court proceedings, the Company may not be able to withhold documents and/or testimony or seek a protective order—to protect confidential trade secret information or information subject to the attorney-client privilege and/or work product doctrine.

Potential waiver of applicable privileges in litigation is a real concern during productions to Congress and, therefore, negotiations on scope and confidentiality are critical. Moreover, all information and documents produced to committees are at risk of disclosure because there are no practical protections against public disclosure.

Along with the issues outlined here, one other trend is inevitable — any major scandal or publicly reported high-profile regulatory investigation is also likely to draw congressional scrutiny. Companies involved in large-scale investigations, whether by the Department of Justice, groups of state attorneys general, or other agency regulators, should also be prepared to field questions from Congress at some point.

Representing a corporation in a congressional investigation requires a unique skill set, demanding knowledge and experience beyond that which is typically needed to represent a corporation in any other government investigation. The risks of getting it wrong can be consequential, beginning with reputational risk, and extending to an impact on share price, civil litigation risk, and follow-on government investigations and enforcement actions brought by agencies and departments in the Executive branch.

Authors:

Thomas J. Spulak, Partner

Drawing upon his deep experience with the legislative process, Thomas J. Spulak's practice includes the development and execution of Legislative and Execu-



tive Branch strategies involving issues critical to domestic and foreign interests. His practice also includes advising corporations on complying with the vast array of laws that regulate the interaction of lobbyists with state and federal government officials. He is actively involved in numerous lobbying efforts on the most pressing issues in Washington, involving tax, health, energy, defense, aerospace and appropriations. Before entering private practice, Thomas served as Staff Director and General Counsel

of the House Committee on Rules, as well as General Counsel to the U.S. House of Representatives. Drawing upon his deep experience and understanding of Congress's power to investigate, Thomas is a key player in the firm's Congressional Investigations practice.

Kendrick B. Meek, Senior Advisor

Kendrick B. Meek currently serves as a senior advisor to a diverse group of companies in the healthcare, homeland security, agriculture, and financial services sectors.



He draws upon strategic skills developed over a long tenure in politics, including his time in the U.S. House of Representatives, Florida State Legislature and as Special Representative to the United Nations. With a strong legislative record in the Florida Senate and Florida House of Representatives, Congressman Meek secured a spot on the House Ways and Means Committee. In that capacity, he was successful in sponsoring and passing legislation focused on tax, trade and healthcare issues. He regularly counsels clients who have been called to appear before congressional investigative committees, preparing them for the challenges ahead.

Daniel F. Donovan (Dan), Partner

Daniel F. Donovan's practice focuses on congressional, state attorneys general, and parallel government investigations. As a former Chief Investigative Counsel in



the Senate, he represents leading companies, individuals, trade associations, and nonprofit entities, providing effective crisis management counsel. He works at the forefront of controversial and politicized national and state policy issues that frequently lead to investigations and litigation, including congressional, multi-state and federal agency enforcement actions. Dan is ranked Band 1 Nationwide for Congressional Investigations by *Chambers USA*. With two decades of crisis management experience, he helps clients manage significant legal, public relations and political risks.

SEC Issues First AI-Related Civil Penalties and Warns Against "AI Washing"

By Kelly Ruane Melchiondo of Bilzin Sumberg

Securities and Exchange Commission on Monday, March 18, 2024, entered into settlements with Delphia (USA) and Global Predictions, which agreed to pay civil penalties totaling \$225,000 and \$175,000, for "AI Washing." AI Washing entails making false statements regarding the use of artificial intelligence technology. Monday's enforcement actions against Delphia and Global Predictions are the first in which the SEC charged companies with violating federal securities laws in connection with AI disclosures.

The SEC targeted Delphia for making misleading statements in SEC filings, press releases and on its website regarding how Delphia purportedly combined its client data with AI and machine learning to "predict which companies and trends are about to make it big and invest in them before everyone else." According to the SEC, those statements were false because Delphia admitted to the SEC in July 2021 that it had neither used client data nor created an algorithm for such investment advice. Despite this admission, Delphia continued making these false statements through August 2023.

Global Predictions falsely touted itself as the "first regulated AI financial advisor," and claimed on its website and in social media posts that its platform provided "expert-driven AI forecasts." When the SEC questioned the statements, Global Predictions could not substantiate its performance claims.

Without admitting or denying the SEC's allegations, Delphia and Global Predictions consented to entries of orders that found that they violated the Marketing and Compliance Rules under the Investment Advisers Act of 1940, and agreed to cease and desist from further engaging in prohibited conduct.

In its press release announcing the settlements, the SEC warned companies: "If you claim to use AI in your investment processes, you need to ensure that your representations are not false or misleading. And public issuers making claims about their AI adoption must also remain vigilant about similar misstatements that may be material to individuals' investing decisions."

Public companies, investment advisers and broker-dealers that use AI must be prepared for enhanced SEC scrutiny, even in the absence of a specific SEC rule related to AI. The SEC is prepared to use existing regulations, such as the Marketing and Compliance Rules to enforce its

objectives. These companies, advisers and broker-dealers must ensure that they understand the AI technology they use, and that they can disclose truthfully what their AI can, and cannot, do, both in their marketing materials and in their disclosures to the SEC. Companies should consult with their technical vendors and with counsel to ensure that statements are both unambiguous and accurate.

Author:

Kelly Ruane Melchiondo - Kelly is a Partner in Bilzin Sumberg's Construction Law and Litigation Group, and is a member of the firm's Data Security & Privacy Team. Her cybersecurity practice



focuses on counseling clients on safeguarding their data and private information by drafting and implementing policies for data security and strengthening internal controls, assisting clients with data breach prevention and response including reporting to and interacting with state regulatory and law enforcement agencies tasked with enforcing state data privacy laws, and client counseling to strengthen internal data security controls.

We're Getting SOCIAL!

For the latest photos and details from our events, please be sure to follow ACC South Florida Chapter on Instagram and Facebook. On LinkedIn, join our group page exclusively for members. In addition, we are excited to now have a public ACC South Florida Chapter page for interaction with our sponsors, respective companies and everyone. On all of our social media platforms, feel free to tag ACC South Florida Chapter on your posts and hashtag #accsouthfl.

You can find updates, event information and more at:



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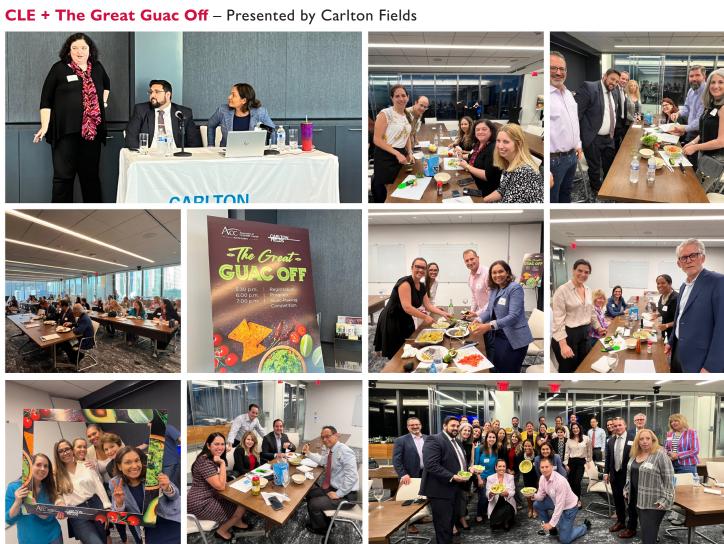


ACC South Florida Chapter

EVENT PHOTOS

Broward Legal Aid Pro Bono Clinic





Miami-Dade Progressive Dinner – Presented by Shook, Hardy & Bacon; Omni Bridgeway; Carlton Fields



New Member Happy Hour



NEW BOARD MEMBER SPOTLIGHT



Eve Perez Torres

Senior Attorney, International Legal & Regulatory Affairs, FedEx Logistics, Inc.

How long have you been an ACC South Florida member? 2 years

Why did you join the ACC? Many reasons, the tools and resources that it has for in-house counsel, sample forms, policies, legal news articles, commentaries, updates, and the quality of its events.

What is a typical day like for you at FedEx? I cannot even check my email without having a big cup of dark, no

sugar, Colombian coffee. That is my first and foremost event of the day. After that it is like any other in-house role. However, what makes my experience in FedEx outstanding is the opportunity to work in different areas of the business across the globe; not only in the transactional portion of it, but in litigation management and compliance.

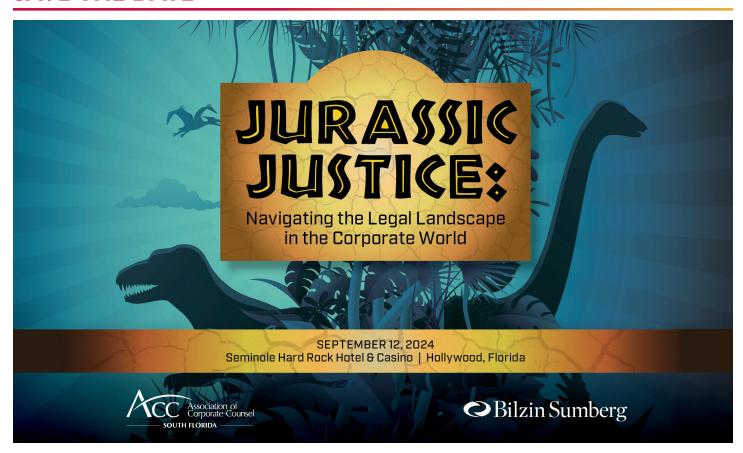
What do you most enjoy about being in-house? Not only in-house but being in a global company is a legally and culturally enriching experience. There are always new challenges, new regulations and policies that test a company's ability to adapt to this evolving market. I also enjoy working on dispute prevention and resolution in global transactions.

When you're not working, where would we find you? In a Peruvian restaurant or at the beach, LOL.

What's your favorite quote right now? Joshua 1:9 Have I not commanded you? Be strong and courageous. Do not be afraid; do not be discouraged, for the LORD your God will be with you wherever you go

Tell us something that might surprise us about you. I can see myself being the female fully-tattooed version of Slash. I'm too old now, but there is a hard-rock guitarist inside me.

SAVE THE DATE



ACC South Florida Upcoming Events

JUNE

JUNE 25

Legal Services of Greater Miami – Advanced Directives Clinic

JULY

JULY 11

General Counsel/Chief Legal Officer Dinner Presented by Armstrong Teasdale

JULY 16

Women's Event

Presented by Fisher Phillips

AUGUST

WEEK OF AUGUST 16

Social Event

Presented by Fisher Phillips

SEPTEMBER

SEPTEMBER 12

14th Annual CLE Conference @ Seminole Hard Rock Hotel & Casino

Be on the lookout for calendar updates!

Welcome New Members!

Meredith Allen

Worley Group Inc.

Julien Apollon

Scale LLP

Mark Braitman

SAP America, Inc.

Lauren Brunswick

Celdara Medical, LLC

Dennise Calderon-Barrera

NextEra Energy Resources, LLC

Angela Castronovo

Progressive Corporation

Steven Dickstein

HEICO Corporation

Kevin Donaldson

NextEra Energy Resources, LLC

Marti English

AlphaStaff, Inc.

Tiara Fields

The Hackett Group

Andrew Goodenough

Allstate Insurance Company

Arden Joseph

Visa U.S.A. Inc.

Violeta Longino

Caban

Dolina Lordeus Lascaze

Allstate Insurance Company

Charise Morgan

Zurich North America Group

Nicole Nachtsheim

JM&A Group

Jennifer Nelson

Zevia PBC

Yolyvee Rivera

Black Diamond Services

Andrea Rodriguez

Yahoo

Gladis Sanchez

Cornerstone Building Brands, Inc.

Taéylor Stanley

Xero

Naim Surgeon

NextEra Energy Resources, LLC

Sandra Upegui

PLOS

Monica Villegas

Genesys Cloud Services

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Platinum

Bilzin Sumberg

Gold

Gunster Fisher Phillips Nelson Mullins

Silver

Akerman

Barnes & Thornburg

FordHarrison LLP

Jackson Lewis

King & Spalding

Saul Ewing Arnstein & Lehr LLP

Shook Hardy and Bacon, LLP

Squire Patton Boggs

TCDI

Winston & Strawn

Bronze

Armstrong Teasdale

Carlton Fields

FTI Consulting

Latitude

Littler

Robert Half Legal

Miami-Dade Progressive Dinner

Shook Hardy and Bacon, LLP (Premier)

OmniBridgeway (Dinner)

Carlton Fields (Dessert)

GC/CLO Dinner

Armstrong Teasdale FTI Consulting

Social Event + CLE

Carlton Fields

Mini MBA

Foley & Lardner

Women's Event

Fisher Phillips

DLA Piper

Holiday Party

Barnes & Thornburg (Palm Beach) Cozen O'Connor (Miami)

Newsletter Article

Barnes & Thornburg

King & Spalding

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Senior Counsel, Employment, Gap, Inc.

David Brill

Managing Director, FTI Consulting

Executive Director

Christina Kim



Christina Kim Executive Director

Executive Director Note

Dear Members,

When early June rolls around, the song in my head on repeat is inevitably Alice Cooper's "School's Out". However, ACC South Florida is not out! We have some great and engaging events planned over the next few months including an Advanced Directives Clinic with the Legal Services of Greater Miami where we will be helping the low income elderly community to prepare their health designation, power of attorney and living will - we hope many of you will join us in this opportunity to give



Christina + Ben at the Miami Corporate Run

back to our community. We will also have a women's event hosted by Fisher Phillips and an end-of-summer social event, also hosted by Fisher Phillips – more details to come on those soon!

We are actively planning our 14^{th} Annual CLE Conference which will take place on Thursday, September 12 at the Seminole Hard Rock Hotel & Casino – it is guaranteed to be a roar-ing good time! Registration will launch in early July with early bird pricing so please keep an eye out on your emails.

Whatever your plans are this summer, we wish you a safe, relaxing, and cool time.

Sincerely,

Christina Y. Kim

Executive Director, ACC South Florida