



Monday, October 19
9:00 am–10:30 am

701 Best Practices for Managing the HR Department

Jason Weintraub
Vice President and General Counsel
DRI Companies

Darryl A. Weiss
General Counsel/ Secretary
Telgian Corporation

Erin Williams
Legal Counsel
Cortina Systems, Inc.

Faculty Biographies

Jason Weintraub

Jason Weintraub is vice president and general counsel of the DRI Companies, one of the largest residential and commercial energy, roofing, and waterproofing subcontractors on the West Coast.

Prior to joining DRI, Mr. Weintraub gained extensive experience in complex and class action litigation at Howard Rice Nemerovski Canady Falk and Rabkin, and at Horvitz & Levy LLP.

Mr. Weintraub is a frequently sought-after lecturer at continuing education seminars, speaking on such issues as product liability, construction defect law, insurance coverage, unfair competition law, and complex civil litigation. In 2008, the DRI Companies legal department was selected as one of the Top 10 Most Innovative Legal Departments in Corporate America by *Inside Counsel* Magazine. Articles written by Mr. Weintraub have appeared in *California Litigation*, *Verdict*, and *For the Defense* magazines, as well as in the Lexis-Nexis Insurance Reporter.

Mr. Weintraub received his JD from Berkeley Law (Boalt Hall – University of California) and his undergraduate degree from Stanford University.

Darryl A. Weiss

Darryl A. Weiss is currently the general counsel and secretary for Telgian Corporation. Telgian offers comprehensive fire protection, life safety, security, engineering, risk management, and loss control services to Fortune 500 companies. His responsibilities include providing legal counsel to the organization and board of directors, merger and acquisition, international law, executive compensation, contracts, IP, employment and labor law and data privacy issues as well as oversight of licensing, risk management and human resources.

Prior to joining TVA, Mr. Weiss worked in the aerospace, computer, telecommunications and biotechnology industries in a variety of legal and human resources roles. Mr. Weiss has worked onsite in Canada, England, France, Germany, Hong Kong, Ireland, Japan, Malaysia, Netherlands, Singapore, Sweden, and Switzerland.

Mr. Weiss is currently on the board of directors for ACC's San Diego chapter and is the past chair of ACC's International Legal Affairs Committee. He is a member of the ABA CBA and Ontario Bar Associations.

Erin Williams

Erin Williams is legal counsel at Cortina Systems, Inc., a semiconductor company located in Sunnyvale, CA. As a member of a small legal department, she supports the company's worldwide operations on a wide variety of matters, including: employment, corporate, compliance, and contracts, as well as intellectual property portfolio management and licensing.

Prior to joining Cortina, Ms. Williams was legal counsel at Sunrise Telecom Incorporated where she handled similar matters and, before that, she was an associate at Intellectual Property Law Group LLP, both located in San Jose, CA.

Ms. Williams earned her JD from U.C. Hastings School of the Law and her LLM from the University of Washington's School of Law.

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What do you do when you are handed control of the HR department?

(Or you work closely with HR in a small company?)

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Overview

- Goals
- Reviewing the HR Department
- Does your outside counsel get it?
- Important Laws - Alphabet soup
- International incidents
- Investigations
- HR and Legal
- Resources
- Questions

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Goals

Why is HR reporting to you?

- You lost?
- The blending of duties?
- The same basic function:
 - It is the goal of the Board to decide the direction of the company and it is the goal of both Legal and HR to structure the road for getting there.

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What HR is

Do you know?

- Business partner
- Affects on the bottom line
- Talent management and retention
- Organizational development
- Benefits development, administration and management
- Overhead

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What HR is Not

- Clothing police
- Party planners
- Janitors
- IT
- Nursemaids
- Babysitters

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Review the Department

- Proper skills?
- Processes documented?
- Basic or better knowledge of laws?
- Understanding of business?
- Records management and security?
- People in the right spots?
- Staffing level correct?
- Right attitude?
- Proper certifications?

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You're New, What to do First?

- Evaluate the department's processes (for priority, efficiency, etc.)
- Check the status of policy and personnel documents, and record keeping
- Get access to HR systems
- Evaluate the people (for competence, workload management, etc.)
- **KEY: Learn how to do the tasks performed by each member of the department!**

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Important HR Duties

- Hiring and Terminations/Employee Relations
- Benefits administration
- Reviews and performance management
- Payroll
 - Rules and taxes
 - International
 - Frequency of payment
 - Garnishments
 - 401(k)

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Basic Relationship Models

- Legal and HR as one unit
- Legal directly managing HR
- Legal and HR are separate

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Tips

- Trust
- Communication
- Scale
- Cleaning up
- Proactive

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Outside Counsel

Cost
+ Time
+ Expertise
= Value

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Outside Counsel

- Expert
- Expensive
- Administrative support
- Delays common
- General / knows business
- Salary
- Under staffed
- On the spot for urgent and emergency matters

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Outside Counsel

- FIRST – Who are they?
- SECOND – Contact them
- THIRD – Do you need them?
- FOURTH – Monitor outside legal expenses
- FIFTH – Do they understand your company's tolerance for risk? Are they more interested in selling work than giving you a practical answer?

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Important Laws: Alphabet Soup

Things to know about and how it affects your company:

- ERISA
- IRCA 86, AC21
- FMLA
- WARN
- OSHA
- EEOC
- EFCA
- ADA/ADAA
- HIPAA

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More Laws

FLSA (exempt vs. non-exempt):

- The Battle never ends
- Farmers Insurance:
- "Administrative" employees (i.e., those whose primary duty is to administer the business affairs of their employer) and so-called "production" employees (i.e. those whose role is essentially to perform the service the employer is in business to provide).

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International Issues

- Data Privacy
- Offers and terminations
 - Employment at will?
- Benefits/compensation
 - Top up
 - Frequency of pay
 - Foreign counsel
 - Global pooling
 - Entitlements

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Expats

- Cha-ching!\$!
- How selected
- Profile of employee
- Tax
- Equalization
- What is taxable

- Pay System
 - Balance sheet
 - Single currency
 - Split pay
 - Lump sum
- Repatriation
- When do they become local nationals?

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US Immigration Visas

- B-1 Visitor for Business
- F-1 Student
- H1b Worker in Specialty Occupations
- H-2 Unskilled
- H-3 Trainee
- J-1 Exchange visitor
- L-1 Intercompany Transfer
- O-1 Individuals of Extraordinary Achievement
- P-1 Performing Entertainers and Athletes
- TN-1 Trade NAFTA

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Investigations

- TYPES
 - Harassment / Retaliation
 - General wrongdoing/Policy Violation
 - Payment Disputes
 - Whistleblower Complaints

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Privilege Issue

- Is privilege the most important thing to consider?
- If privilege is important, who should conduct the investigation?
- Who is qualified to conduct investigations?
- What training has been done re conducting investigations?

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Investigations: Decision-Making

- Confidentiality: Who should know an investigation is underway?
- Who should make conclusions re facts?
- Who makes decisions re course of action after investigation is completed?

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Investigations: TIPS

- DOCUMENT all investigations.
- Document corrective action.
- Make sure investigator avoids legal conclusions when summarizing results.
- Interview relevant witnesses, but know when to stop!

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Investigations: Mitigating lawsuit risk

- Documentation of investigations.
- Trained/competent investigator.
- Consistent treatment of like situations.
- Avoid "verbal" discipline.

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What Legal says about HR

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HR usually calls Legal for help **after** things blow up.

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HR sends non-legal matters to Legal too often.

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It really helps to have an experienced HR person on board.

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What HR Says About Legal

HR especially looks to Legal for help with:

- Employment and vendor contract review
- Audit support
- Visas
- Expats
- Setting up foreign legal entities
- Terminations
- Employment claims

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HR Said What?

The Problems:

- In-house counsel inexperienced with employment law.
- Delays caused by consulting with outside counsel.
- Forcing wrong decisions on HR and won't research or check.
- Lack of people skills.
- Always says NO, too focused on liability, but no real world solutions (i.e., too risk averse)

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What HR Wants From Legal

- HR wants Legal to be an engaged stake-holder.
- HR is looking for collaboration with Legal.
- HR wants in-house counsel to stay involved even when outside counsel is used.
- HR wants education from Legal on employment law updates.

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Resources

Where do you go for help?

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ACC Resources

- Annual Meeting
- Lunches
- Infopaks
- Docket Articles
- Surveys
- Program materials
- Forms
- Quick References
- Committees

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ACC Committees

- Listserves
- Webcasts
- Monthly Committee Teleconferences
- Legal Quick Hit

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More Resources

- Society for Human Resources Management
 - www.shrm.org
- World at Work (formerly American Compensation Association)
 - www.worldatwork.org
- International Foundation (benefits)
 - <http://www.ifebp.org/default.asp>
- AHI's Employment Law Resource Center
 - www.ahipubs.com
- American Immigration Lawyers Association
 - www.aiala.org

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Still More Resources

- Your State's Chamber of Commerce
- Your State's Department of Labor
- American Chamber of Commerce
- Employment Development Department www.edd.ca.gov in California
- FEHA
- Industry Trade Associations

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And Even More Resources

- Law firms, especially their free seminars.
- Vendors like LawRoom, WeComply, EthicsPoint....

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The Best Resource?

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NETWORKING

with other similarly situated in-house attorneys in your area and industry.

- Go to networking events (at least monthly)
 - ACC lunches
- Get/keep cards of possible contacts
- Make a reference list
- Keep in touch / share
 - Call and email contacts
 - Make occasional lunch dates with interesting contacts
 - *Ask your employment law firm to introduce you to their other clients' HR managers!*

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ACC Extras

Supplemental resources available on www.acc.com

ERISA: Top Ten Compliance Areas.

Program Material. October 2008

<http://www.acc.com/legalresources/resource.cfm?show=157494>

209 Benefits 101- A Primer on Employee Benefits Laws.

Program Material. February 2007

<http://www.acc.com/legalresources/resource.cfm?show=20145>

International Insurance Law.

Program Material. October 2008

<http://www.acc.com/legalresources/resource.cfm?show=160423>

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.