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Lisa Nagele-Piazza

Welcome to The FP5: Five Things for Your 9-to-5.

Becca Rainey

We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Becca Rainey.

Rich Meneghello

And I'm Rich Meneghello.

Lisa Nagele-Piazza

And I'm Lisa Nagele-Piazza.

Rich Meneghello

We're really excited to roll out this new podcast, and if it's not apparent from the title of it, the FP5: Five Things You Need to Know for Your 9-5 is going to present you with the five critical things you need to know about some latest development in the world of workplace law. And each week, one of the three of us will have one of our attorneys from Fisher Phillips on as a guest, and they'll help us dissect some latest development and we'll go over the five things that you need to know about that area.

And so we are your content team here at Fisher Phillips, we're the ones who help produce written insights each and every day, updating employers about the latest developments in workplace law and providing you the practical tips that you need in order to stay up to speed on what's going on. And we're excited now to take that same content but instead deliver it to you in podcast form.

But, we thought we'd do something a little different on this first episode rather than talk to one of our attorneys and get a sense for what's going on in their areas, we thought we'd just have a conversation with the three of us and sort of give a preview to our listeners about what they can expect when they listen in to the FB5 podcast. Hey, Becca.

Becca Rainey

Hey Rich, how's it going?

Rich Meneghello

Good. You know, one of the more exciting things that I think has happened in the firm over the last six months is us bringing you aboard.

Becca Rainey

You're too kind.

Rich Meneghello

Our listeners are going to get the benefit of it, not just from the writing that you do, but the fact that have such a long history covering the Department of Labor.

Becca Rainey

Yeah, some people would call me a nerd.

Rich Meneghello

Some would, and some would call you a wage and hour nerd.

Becca Rainey

Yeah, yeah, we've got a lot of exciting things brewing over at the Department of Labor's Wage and Hour Division. One of the big things we're watching is this independent contractor rule. And that sounds really complicated, but in reality, everyone knows an independent contractor or has likely worked with one. They exist in every single industry within our economy.

Frequently, people point to the gig economy, you know, rideshare drivers or delivery services as a question of whether those workers should be independent contractors who are in business for themselves or employees who have rights under federal wage and hour law, as well as the right to collectively bargain or form unions. So this is super consequential, and the Trump administration is working on a proposal regarding this issue at the Department of Labor. So I'm very excited to nerd out about that in a future episode.

Rich Meneghello

And I'm not as big of a wage and hour nerd as you are, but I will say, every time I get food delivered to my house, I think about whether that person's an independent contractor.

Becca Rainey

You know, I do think about that too, but I think we're among a very limited group of people who think about that whenever they get food delivered.

Rich Meneghello

Probably, and I think that's probably a big portion of our listeners maybe. Who knows?

Becca Rainey

Yeah, yeah. And I mean, when it comes to other developments as well from federal agencies, it really is a tale as old as time over the past decade. We've seen agencies go from what people would consider pro-worker, which essentially makes it harder for businesses to treat workers as contractors or makes it harder for businesses to be held liable as a joint employer. You'll hear those terms quite a bit on this podcast, independent contractor and joint employer, so get used to them.

But we've seen this pendulum go back and forth where administrations, you know, make those rules really strict or make those rules easier for businesses. And right now we are seeing the pendulum swing towards easing that enforcement and compliance concerns for businesses. So it's very important that folks tune in and stay up to date with what's going on because as with anything in Washington, regulations trigger lawsuits, which then pauses enforcement, which then creates all of these questions about what actually is the law and how you can actually comply.

Lisa Nagele-Piazza

Becca, you mentioned the pendulum swing, and I think that is something that employers are very used to when it comes to the NLRB. With each new administration, you see a lot of rule changes going back and forth. And now that the NLRB has a quorum, we're going to see a lot of movement in the next few years. And the board was actually pretty busy in the last week of February. The board officially restored a business-friendly joint employer role.

And that's making it more, it's going to make it more difficult for businesses to be held legally responsible for alleged labor law violations by staffing companies or franchisees or other related businesses. This essentially reverts back to a 2020 rule from president Trump's first term. Now there was a Biden era rule in between, but that had been blocked by a court. So essentially this new rule just makes it official.

Also regarding work rules and handbooks, the last week of February, the (NLRB) General Council issued enforcement guidance to regional offices to basically take a more selective approach when it comes to unfair labor practice charges involving work rules and handbook provisions. The guidance does not change the very broad legal standard under the Biden administration's *Stericycle* decision, but it does show that regional offices are now being encouraged to focus on issues that clearly impact employee rights. And we do expect the board to revisit the issue as well over the next few years.

Another topic that we expect the board to revisit is a Biden-era decision that banned so-called captive audience meetings, which are mandatory meetings that employers hold to discuss union representation with employees. So we think that the Trump board now having a quorum will target that decision for reversal as well. Speaking of growing trends, we haven't touched on artificial intelligence yet. Rich, what can you tell us about this area?

Rich Meneghello

You know what our audience can expect, so I'm gonna give you five things that we're gonna be talking about related to AI in future episodes, ready? So the first one is we're gonna hear a lot about federal attempts to regulate AI, or, its attempts to try to stop states from regulating AI. So that'll be the first thing I guarantee you we'll be talking about.

The second thing is we'll be talking about those states regulating AI because we're gonna see in 2026, Colorado's law, which is a first in its nation, overarching AI scheme, slated to take effect in June. We're gonna see everyone having to gear up for California's big law that will take effect on January 1, 2027, but will require a lot of prep. And there's gonna be other states that will be regulating AI. California will try to further regulate AI, I guarantee you. So we'll talk about that.

The third thing we'll talk about is ways in which employers are using AI for hiring, for recruiting, for performance management, all those sorts of things. Every employer is now trying to figure out a way to include AI in their day-to-day activities. We're gonna talk to you about the pros and cons of it, the risks, the rewards.

And then the fourth thing we'll talk about are the lawsuits, the lawsuits that are inevitably gonna follow. We're starting to see an explosion of litigation when it comes to employer and business use of AI. And so we're gonna have some of our litigators and AI folks and privacy folks on to talk about it.

And then the fifth thing we're gonna talk about is our AI conference. I'm super excited about it. It's one of those things that is one of the highlights of the year for me. It's in-person, June 24 to June 26 in DC. We're gonna be

talking about that and hoping that we get many of our listeners out there to meet us in person to talk about it further. But given the fact that it's in DC, Becca, that's your home territory.

Becca Rainey
Yeah.

Rich Meneghello
We're gonna be talking about DC on this podcast a bunch, I'm sure, and our government relations team, right?

Becca Rainey
Right. I mean, the world does revolve around DC, right?

Rich Meneghello
That's what those in the Beltway think, guess. Those outside of it might think differently, but I'll let you have that delusion if you want.

Becca Rainey
Lately, I can't say that there's been ... there's been a lot of conversation about legislation happening, but there hasn't really been any movement. I mean, Republicans currently have the slimmest margins in both the House and the Senate, and the gridlock is palpable. We had one of the record-setting longest shutdowns all because lawmakers couldn't come up with how to fund the government. And that's basically, Congress's most essential function or their first order, you know, of business to do is to ensure the government has funding.

Rich Meneghello
I think we're in a shutdown right now too, aren't we?

Becca Rainey
Partially, for one, I think for one federal agency, yes. There's a lot of gridlock going on in DC. So with the midterms coming up, if you weren't aware, there is midterm elections this year. There's going to be all 435 seats in the House on the ballot, as well as more than a third of the seats in the Senate. So things could change.

And what we typically see during election season is lawmakers trying to flex their muscles a little bit, maybe introducing a bill to show their constituents that they're working really hard. So we may see some Hail Marys come through, maybe some new bill introductions, reintroductions, or long floor speeches about why these bills matter, et cetera. However, unless the bill is bipartisan, I wouldn't expect us to see any major legislative change go through.

However, something you just mentioned, artificial intelligence, that is an area that is being very closely watched by lawmakers. So I do think that there could be some appetite for bipartisanship there, especially when it comes to AI protections and regulations.

People also need to keep in mind that President Donald Trump really likes to issue executive orders to help advance his policy goals. We've even seen him demanding to shut down a federal agency. He issued an executive order shutting down the Office of Federal Contract Compliance Programs, which is the federal agency that used to investigate anti-discrimination claims and affirmative action obligations for federal contractors.

But yeah, otherwise, until we get to November, it's going to be a lot of talk and a lot of back and forth, I think, from Congress. But I'm very skeptical we'll see any major action in the labor and employment legislative space.

But that's not exactly true for the states, right, Lisa? You've been tracking a ton of state law developments, which actually kind of signal what we may see in Congress down the road, right? If they're successful in the states, it could work at the national level, potentially.

Lisa Nagele-Piazza

Yeah, Becca, absolutely. And if things don't work at the federal level, that's when we also see a lot of state actions. So there are a couple big areas right now that employers should be looking at.

Jumping back to labor relations, one is those captive audience meetings that I was talking about. So even if the Trump administration's board does get to overturn the ban on those meetings, a huge trend at the state level is banning captive audience meetings. So then you're going to see a patchwork. If they're allowed again at the federal level, there may be some states that still have rules that apply to them at the state level.

And then another huge area for state law compliance is pay equity and pay transparency. You'll see laws popping up all over the country that are requiring employers to post compensation and benefits information in their job postings as well as for promotional opportunities. And this isn't just happening in California, Massachusetts, New York, the usual suspects. It's happening all over the country. In fact, in Ohio in 2025, there was some state level action and then also city level ordinances on pay data reporting actually, in Cleveland and Columbus as well.

So you're going to see a lot more at the state and the local level when it comes to pay equity and pay transparency, which also leads to more litigation. Compliance is difficult. There's a patchwork of laws. Every one of the laws could be a little bit different and nuanced. So it's a bit of a headache for employers, and that's why they should really consider doing a privileged pay equity audit. And I am sure we are going to dedicate an episode to that sometime in the future as well.

Rich Meneghello

Lisa, did I hear you say the word patchwork?

Lisa Nagele-Piazza

I certainly did, and I'm sure you know a bit about that when it comes to data privacy.

Rich Meneghello

Yes, exactly. Data privacy has become a massive area of practice for Fisher Phillips over the last decade or so. It shifted from an area that I think a lot of businesses didn't care about or think about or thought was just for their IT people. And now it's front and center for in-house counsel and HR execs and leaders in a company because it's so pervasive and so important. And we're dealing with the patchwork of state laws that continue to grow each year, which is particularly troublesome for those employers that have multi-state operations because they don't have one consistent platform to operate off of. They have to operate when it comes to things like notice for data collection and data collection responsibilities and responsibilities of what to do if there's a breach. And they're all different in every state.

So we're gonna be covering that, I'm sure, but we're also gonna be covering just the explosion of litigation that we have seen in the data privacy field in the last few years. We have our own data privacy litigation tracker map on our website where we're thousands of lawsuits that have been filed against businesses across the country in the last few years. And we're gonna talk with some of the folks in our firm who litigate those cases regularly to find out what are the things, the commonplace things that businesses are doing just by maintaining a website, collecting data from their customers and businesses that are leading to these lawsuits being filed. And more importantly, what are the things they can do to try to minimize the risk of getting sued? It's just an ever-present topic.

And in fact, one of the only topics that I hear about more than data privacy these days from employers when I'm out there talking to clients, besides data privacy is immigration. And so Lisa, we've made it all the way through this discussion about what we could expect to be talking about in our new podcast without talking about immigration. How crazy is that?

Lisa Nagele-Piazza

Yeah, immigration is a huge topic, not just politically speaking, but also for employers and the workplace. And things have been changing at a rapid pace in the last year, and we expect that to continue. And in fact, we are even going to have an episode very soon coming up on the changes to the H-1B visa process. The H-1B cap lottery is taking place in March. So it used to be, you know, historically every year there are more applicants than there are visas available. So for fairness, the USCIS holds a lottery and it used to be just a random lottery, but now it's actually going to be a weighted lottery based on wages. So there's going to be four categories and the highest wage category will get four entries, down to three, two, and one entry per petition.

So that's a huge change there. There's also the \$100,000 H-1B fee that is being applied to some applications. And it's not all, so it's a little bit nuanced and employers should consult with their attorney and look at their specific foreign national employees or job candidates to see if it's going to apply to their situation. So we'll be discussing all of that in more detail in an episode very soon.

Other things, obviously in the immigration realm that employers need to be aware of are just changes to enforcement. I-9 compliance is huge and that could be an episode all on its own as well. And then you also have changes to temporary protected status and things like that. So employees are really going to need to know what changes are taking place, how they're going to apply to their current workforce, and then also potential future employees as well.

Rich Meneghello

The more we talk about all the things that we're gonna be covering on this podcast, the more excited I get. I'm really excited about the fact that we're gonna be able to translate our written insights that we hear so frequently from our clients about how much they appreciate them. And that means a lot to us. I'm really excited about just bringing that same ethos to a different format for those of us out there that really enjoy the podcasts and the way that you get news and information delivered to you this way, we're excited to bring it to you that way. So that's what I'm most excited about.

Lisa Nagele-Piazza

I've been wanting to start a podcast for such a long time, so I'm super excited about this too. And I think for me, I know in my commute in DC on the Metro, I would love to just put on my earbuds and get caught up on everything that I need to know to start my work day. And I really see this as a way to help employers to stay ahead of their

risks, to keep up with what's impacting their workplace and to be able to receive that information in a way that's convenient when they're on the go.

Becca Rainey

Yeah, I think the elevator pitch is “five things that you need to know about workplace law this week.” And something to keep in mind is every single time you listen to our podcast, you'll be taking away something new that you've learned about labor law and also something that you can do to actively ensure that your company is in compliance.

Rich Meneghello

Well, that's all the time that we have. Thanks for listening to the FP5! Hit subscribe and check out this space for our very first episode that we're going to be debuting next week on changes that we're going to see to the H-1B visa program.

Becca Rainey

For more insights from FP, visit fisherphillips.com.

Lisa Nagele-Piazza

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