



"Big Brother" in the Office: Helping Nonprofits Manage Employee Privacy in the Modern Workplace

March 21, 2012

12:00 p.m. – 2:00 p.m. EDT

Venable LLP

575 7th Street, NW

Washington, DC 20004

Moderator:

Jeffrey S. Tenenbaum, Esq.

Panelists:

David R. Warner, Esq.

Grace H. Lee, Esq.

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Presentation

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“Big Brother” in the Office: Helping Nonprofits Manage Employee Privacy in the Modern Workplace

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Overview

- Why are we concerned?
 - Technology trends
 - Workforce realities
 - Increasing challenges
- Legal landscape
 - Monitoring generally
 - Work v. Personal device
- Social media
- Policies and practical tips
- Background checks



Technology

- Increased ability for employers to monitor employee computers and e-mail
- Texting, e-mail, BlackBerries, iPhones, iPads, tablets, etc. allow employees ability to work anywhere anytime
- Work equipment being used for personal matters
- Personal equipment being used for work matters
- Increased use of social media, blogs, for both personal and work matters
- Blurred lines between work and personal life



Technology

- 2009 Survey by ePolicy Institute and American Management Association found that
 - 79 percent of employees had used e-mail to send or receive personal messages
 - 83 percent of employers have rules and policies in place restricting personal use of company equipment
 - 28 percent of employers have fired workers for e-mail misuse, and of those, 26 percent said it was for “excessive personal use”
 - Of companies that monitor e-mail, 73 percent use technology tools to automatically monitor e-mail, and 40 percent manually read and review e-mails



Legal Landscape

- Electronic Communications Privacy Act
 - Covers all forms of digital communications, including private email
 - Generally prohibits
 - Unauthorized and intentional interception of wire, oral, and electronic communications during the transmission phase, and
 - Unauthorized accessing of electronically stored wire or electronic communications
 - Employers are largely exempt from ECPA under one of two exceptions
 - If employer is the provider of the e-mail, Internet, network service, or
 - Employer has implied or express consent of the employee (i.e., employee has knowledge of the employer's policy and continues to use the system anyway, or employee signs acknowledgement of employer's policy regarding privacy and monitoring)
- Fourth Amendment
 - Applies to government employees



Legal Landscape

- State statutes
- Common law
 - Tortious invasion of privacy
- Key issue:
 - Whether there was a legitimate expectation of privacy
 - Even if there was a legitimate expectation of privacy, was it outweighed by legitimate business interest



Legal Landscape

- Personal text messages on employer's device
 - Supreme Court case (*City of Ontario v. Quon*, 2010)
 - Held that search of police officer's personal messages (including sexually explicit messages) on a government-owned pager was reasonable and did not violate police officer's constitutional rights under the 4th Amendment
 - Search was motivated by legitimate work-related purpose (whether it needed to modify its wireless contract regarding text messages)
 - Employer policy stated employee communications would be monitored, but supervisor informed employee that they would not audit texts as long as employees paid any over-limit fees
 - Lesson for private employers – legitimate employer interests may trump employees' privacy interests



Legal Landscape

- Factors courts often use regarding the “reasonable expectation of privacy” determination in the context of email transmitted over employer's server:
 - Does the employer maintain a policy banning personal or other objectionable use
 - Does the employer monitor the use of employee's computer or e-mail
 - Do third parties have a right of access to the computer or e-mails, and
 - Did the employer notify the employee, or was the employee aware, of the use and monitoring policies



Legal Landscape

- Telephone monitoring
 - Employers may monitor business-related calls (except California law requires that when parties to call are all in California, they be informed when conversation is being recorded)
 - Under federal case law, when employer realizes call is personal, he or she must stop monitoring the call



Legal Landscape

- Computer monitoring
 - Employers can see what is on the screen, stored on computer terminals, stored on hard drives
 - Employers can monitor Internet usage such as web-surfing and electronic mail
 - Company e-mail is owned by company and can be monitored and reviewed
 - Even private e-mails sent from company computer to/from Yahoo, Hotmail, or other web-based accounts can be monitored or reviewed
 - Exception found in one case involving e-mails from employee's personal account with attorney due to attorney/client privilege



Legal Landscape

- Personal v. Private Device
 - Increasingly, employees are requesting and employers are allowing use of personal devices to be connected to employer network
 - Challenge is determining what is “private”
 - Same analysis of expectation of privacy applies



Social Media

- When can employer monitor, review, or take action based on employee social media activities
- Certain laws protect employees from being disciplined and fired based on social media posts
 - Labor laws – Section 7 of the NLRA protects “concerted activity” about terms and conditions of employment
 - Whistleblower laws (federal and state)
 - Anti-retaliation laws
 - Off-duty conduct state laws



Social Media

Key: Limit or decrease expectation of privacy (express or implied consent)

- Specific disclaimers waiving right to privacy
 - Inform employees that e-mail should not be considered private
 - Passwords, even if “personalized,” are on loan and are property of the company
- Blanket disclaimers in employee handbooks, etc.
 - Company property is for company use
 - Using company property for private use may be cause for discipline
- Notify employees clearly of corporate testing, monitoring and surveillance policies
- Proceed with caution before taking any disciplinary action against employees for violations of social media or Internet use policies (especially personal use)



Policies

- Zero-tolerance policy is not recommended
 - Not realistic, workable, or welcome in today's mobile workforce
- Electronic communication policy must be in place
 - Protect organization's assets
 - Protect reputation
 - Increase productivity
 - Ensure compliance with the law



Policies

- Be specific
 - What type of monitoring
 - Frequency of monitoring
 - Purpose of monitoring
 - Scope of monitoring (including personal e-mails, voicemails, phone calls, video monitoring)
- Filtering of certain websites
- Establish clear security procedures to protect private information
- Establish guidelines regarding use of portable devices such as laptops, BlackBerries, and cell phones



Policies

- Policy considerations for mixed-use devices
 - Security of information (passwords, encryption, etc.)
 - What type of monitoring will occur of personal devices connected to employer network
 - Access to nonprofit data, information, and other relevant information stored on the personal device
 - What happens in the event of an investigation or litigation
 - How does information from personal device get stored for document retention and destruction purposes
 - Retrieving information when employee resigns or gets terminated
 - Require virus protection
 - What happens if device is stolen or lost
 - “Kill command”
- Consider personal device use agreement, in addition to other policy



Practical Tips

- Work with IT to wall-off company e-mail on personal devices (i.e., “Good” software)
- Exit interviews
 - Ensure return of property, and information stored on personal devices, external hard drives, cell phones, and other devices before employee leaves



Background Checks

- Emerging issue: increased privacy protections in the background check process
 - Increased protection of applicant information learned through background checks
 - Whether the use of credit history and criminal history constitutes adverse impact discrimination
 - Pepsi Case
 - EEOC’s investigation revealed that more than 300 African-Americans were adversely affected when Pepsi applied a criminal background check policy that disproportionately excluded black applicants from permanent employment
 - Under Pepsi’s former policy, job applicants who had been arrested pending prosecution were not hired for a permanent job even if they had never been convicted of any offense
 - 3.13 million dollar settlement, and provide job offers and training



Background Checks

- Emerging issue:
 - Lessons from Pepsi
 - EEOC recommends that employers consider:
 - nature and gravity of the offense,
 - time that has passed since the conviction and/or completion of the sentence, and
 - nature of the job sought in order to be sure that the exclusion is important for the particular position



Background Checks – State Laws

- California
 - For all background checks through reporting agency, must add reporting agency's website to authorization form so that individuals can go online and check the agency's privacy policies
 - If doing credit checks, must be job-related and must explain the reason in notice and authorization form:
 - Position is in management
 - Position is in the State Department of Justice, a sworn peace officer, or law enforcement
 - Employer is required by law to consider credit history information.
 - Job requires regular access to bank or credit card account information, Social Security numbers, or dates of birth (but not if access to such information merely involves routine solicitation and processing of credit card applications in a retail establishment)
 - Employee will be a named signatory on the bank or credit card account of the employer
 - Employee will be authorized to transfer money or authorized to enter into financial contracts on the employer's behalf
 - Job affords access to confidential or proprietary information.
 - Job affords regular access during the workday to the employer's, a customer's, or a client's cash totaling at least \$10,000



Credit Checks – State Laws

- Maryland – Job Applicant Fairness Act
 - Employers may not use credit report or credit history of applicant or employee to make employment decision including hiring, firing, or determinations about compensation or terms/conditions of employment
 - Does not apply to financial institutions that accept federally insured deposits, credit unions, or investment advisors registered with SEC
 - Employer MAY request credit history post-offer if credit history is substantially job-related and disclosed in writing to the applicant or employee
 - Job-related: managerial (involves direction or control of business or department); access to personal information of customer, employee, or employer (such as social security number, account number); involves fiduciary responsibility to the employer (authority to issue payments, collect debts, transfer money, enter contracts); provided an expense account or corporate credit card; or have access to trade secrets or other confidential business information
- Connecticut, Hawaii, Washington, Oregon, and Illinois have similar laws
- EEOC conducting investigations
- Many other states considering similar legislation
- Proposed federal “Equal Employment for All Act” – similar to CT and MD laws



Background Checks

- Elements
 - Education check
 - Reference checks
 - Criminal background check
 - Social security check
 - Credit check?
 - Google?
- Factors to consider in determining level of check
 - Level of position
 - Level of access to information, funds, and discretionary spending
 - Cost
 - Consistency
- Ensure compliance with Fair Credit Reporting Act



Background Checks

- What to do with the information
 - Interpretation
 - Relevance
 - Consistent and methodical approach
- Recordkeeping
- Understanding limits of the background check
- Maximizing other parts of the hiring process to make a good hire



Questions?

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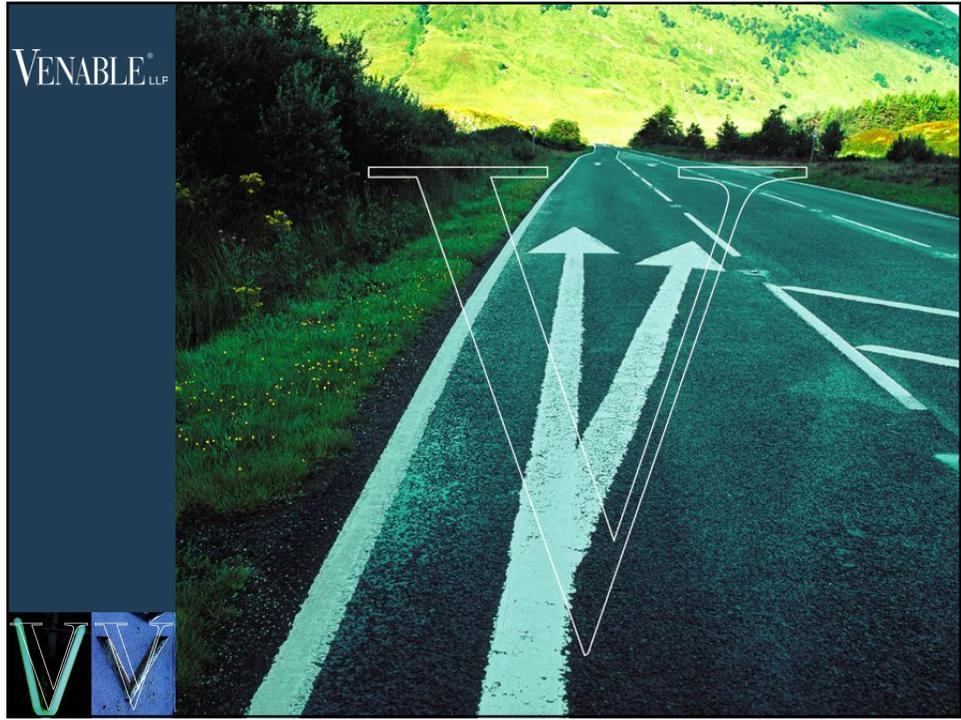
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To view Venable's (searchable) index of articles, events, PowerPoint presentations and recordings on nonprofit legal topics, see www.Venable.com/nonprofits/publications, www.Venable.com/nonprofits/recordings and www.Venable.com/nonprofits/events.





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Speaker Biographies



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AREAS OF PRACTICE

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 Tax Controversies
 Tax Policy
 Tax-Exempt Organizations
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INDUSTRIES

Nonprofit Organizations and Associations
 Credit Counseling and Debt Services
 Financial Services
 Consumer Financial Protection Bureau Task Force

GOVERNMENT EXPERIENCE

Legislative Assistant, United States House of Representatives

BAR ADMISSIONS

District of Columbia

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer and commentator on nonprofit legal matters. Based in the firm's Washington, D.C. office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting trade and professional associations, charities, foundations, think tanks, credit and housing counseling agencies, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, the inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award, the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. He also was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. He started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill.

HONORS

Listed in *The Best Lawyers in America 2012* for Non-Profit/Charities Law, Washington, DC (Woodward/White, Inc.)

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, published by the American Society of Association Executives, and is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. He also is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. In addition, he is a frequent author for ASAE and many of the other principal nonprofit industry organizations and publications, having written more than 400 articles on nonprofit legal topics.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer for ASAE and many of the major nonprofit industry organizations, conducting over 40 speaking presentations each year, including many with top Internal Revenue Service, Federal Trade Commission, U.S. Department of Justice, Federal Communications Commission, and other federal and government officials. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *The New York Times*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal issues on Voice of America Business Radio and Nonprofit Spark Radio.



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 of Maryland
 U.S. District Court for the District
 of Columbia
 U.S. Court of Appeals for the
 Fourth Circuit
 U.S. District Court for the Northern
 District of Florida

EDUCATION

David Warner's practice focuses on the resolution and litigation of complex labor, employment, and business disputes. He represents and counsels both private and public sector clients, with a particular emphasis on the government contractor and non-profit industries.

Employment Counseling: A substantial portion of Mr. Warner's practice is devoted to counseling employers on labor and employment related matters in order to minimize potential litigation risk. In addition to day-to-day counseling on employment actions, Mr. Warner provides guidance regarding the design and implementation of effective and defensible application, hiring, promotion, and compensation practices, including conducting comprehensive audits of personnel practices to proactively identify and remediate issues that could give rise to class claims. Mr. Warner also advises companies in cross-border employment matters, including the design and implementation of expatriate employment agreements, application of U.S. laws to foreign-based employees, and related issues. Representative engagements include:

- Design and implementation of ex-pat employment agreements for employees located in Iraq, Afghanistan, Africa, Central and South America, and the Caribbean
- Investigation and resolution of harassment allegations of foreign employees in Africa
- Negotiation of 70% reduction of back-pay and benefits demanded by United Mine Workers of America under the federal Worker Adjustment and Retraining Notification ("WARN") Act following shutdown of mining facility
- Design and implementation of strategic corporate diversity initiatives for company with 100,000+ employees
- Design and implementation of application and selection processes for 5,000+ management positions at Fortune 100 company
- Training of executives and senior leadership regarding talent management best practices at Fortune 100 company
- Comprehensive equity analysis of management pay at Fortune 500 company, including implementation of remedial adjustments to employee compensation

Employment Litigation: Mr. Warner routinely represents employers in litigation concerning alleged violations of Title VII, the ADA, ADEA, and other federal and state laws prohibiting discrimination and retaliation. Mr. Warner's litigation experience includes complex class action litigation, brought by both private claimants and government agencies, involving extensive electronic discovery and statistical analyses. Representative engagements include:

- Serving as lead defense counsel in nationwide promotions class action pending before the Equal Employment Opportunity Commission (EEOC)
- Lead defense counsel in successful opposition to class certification in five putative class actions before the EEOC

J.D., *cum laude*, Georgetown University Law Center, 1996

Editor, Articles and Notes,
American Criminal Law Review

B.A., *cum laude*, Georgetown University, 1993

MEMBERSHIPS

American Bar Association

Maryland Bar Association

Virginia Bar Association

District of Columbia Bar Association

Maryland Defense Counsel, Inc.

- Member of defense trial team for what would have been the largest employment discrimination class action ever tried to a jury had the matter not resolved – following a significant defense victory on motions *in limine* – on the eve of trial
- Lead defense counsel for successful defense of several discrimination and wrongful termination claims filed in the District of Columbia against national hotel chain under private ADR agreement

Business Litigation: Mr. Warner also routinely represents companies in litigation concerning the enforcement of management rights in regard to restrictive covenants, trade secrets, business conspiracy and procurement integrity laws. Representative engagements include:

- Representation of telecommunications contractor in prosecution of business conspiracy, copyright, breach of duty of loyalty, and trade secrets claims against former employee and competitor; matter resolved prior to trial with more than \$4 million paid to client
- First-chair counsel for government contractor in breach of contract, Unfair Trade Practices Act, and fraud claims against prime contractor; matter resolved before filing of complaint with full recovery of more than \$750,000 paid to client
- First-chair counsel in prosecution of breach of duty of loyalty and trade secret claims against medical supply sales representative in Maryland
- First-chair counsel in prosecution of breach of duty of loyalty and non-compete violation against sales representative in Maryland

Government Contractor Compliance and Audits: Mr. Warner has extensive experience advising government contractors in compliance matters, audits, and litigation with the federal government. Representative engagements include:

- Lead attorney in negotiation of 75% reduction of multi-million dollar back pay demand (levied prior to client's engagement of Venable) on behalf of one of the fifty largest private employers in the United States; directed compliance efforts resulting in successful conclusion of multi-year conciliation agreement
- Lead attorney in successful resolution of defense contractor audit, which included significant issues concerning pay equity in salaried ranks
- Lead attorney in training of executives and senior leadership regarding affirmative action, diversity, and talent management best practices at Fortune 100 company
- Represented client in successful resolution of OFCCP glass ceiling audit of multi-billion dollar services company
- Represented client in successful resolution of glass ceiling audit of multi-billion dollar food manufacturing company
- Represented client in defense of claims of systemic hiring discrimination brought by OFCCP against national financial services company

PUBLICATIONS

- February 21, 2012, How Nonprofits Can Avoid the Legal Pitfalls of Telecommuting Employees
- December 2011, Consumer Financial Protection Bureau Opens Whistleblower Complaint Hotline, CFPB Watch
- September 12, 2011, Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls
- August 11, 2011, Focus on Misclassification: Are Your Nonprofit's Workers 'Employees,' 'Volunteers,' or 'Contractors?'
- May 18, 2011, Focus on Misclassification: Are Your Nonprofit's Workers 'Employees' or 'Independent Contractors?'
- March 29, 2011, Dangers and Opportunities: Navigating Nonprofit Partnerships, Collaborations, Joint Ventures and More
- December 6, 2010, Mergers, Alliances, Affiliations and Acquisitions for Nonprofit Organizations: Financial and Legal Issues
- June 2010, Turns Out, There's No Such Thing As "Free Labor" Either: Why Most Employers Should be Paying Interns or Modifying/Abandoning Their Unpaid

Internship Programs, Labor & Employment News Alert

- May 12, 2010, Nonprofit Labor and Employment: Challenges, Solutions and Legal Pitfalls
- May 6, 2010, Proactive Strategies for Minimizing HR and Other Legal Risks in Mergers and Joint Ventures (PowerPoint presentation)
- May 6, 2010, Proactive Strategies for Minimizing HR and Other Legal Risks in Mergers and Joint Ventures (handouts)
- April 2010, "What Are You, People? On [State-Licensed Medical Marijuana]?" – The Hazy Intersection of State Medical Marijuana Laws, Federal Authorities and Employer Drug Free Workplace and Testing Policies, Labor & Employment News Alert
- April 19, 2010, Comments to EEOC Notice of Public Rulemaking Regarding "Reasonable Factor Other Than Age" Under the Federal Age Discrimination in Employment Act
- Summer 2009, "Spiraling Costs and Crashing Markets – Who Will Be Left Holding the (Empty) Bag for Depleted Pensions and Unfunded Health Care Liabilities?" in *Law Journal of the Energy and Mineral Law Institute*, 30th volume
- January 4, 2010, December "Payroll Surprise" Waiting for Some Employers in 2010, Labor & Employment News Alert
- May 21, 2009, Nonprofits in Lean Times: Employment and Labor Challenges for Nonprofits in the Economic Downturn
- February 2, 2009, President Obama Issues Three Labor-Friendly Executive Orders, Labor & Employment News Alert
- February 2008, IP News & Comment - February 2008, IP Buzz
- August 2005, Legal Trends: E-Mail and Electronic Discovery – Ignore Now, Pay Later, *HR Magazine*
- April 1, 1999, Avoiding Liability in Discipline and Termination Decisions - A Reverse Engineering Analysis

SPEAKING ENGAGEMENTS

Mr. Warner is a frequent lecturer on topics including compliance with the McNamara-O'Hara Service Contract Act, the Davis-Bacon Act, the Family and Medical Leave Act, the Fair Labor Standards Act, reasonable accommodation under the Americans with Disabilities Act, OFCCP compliance, hiring, firing, discipline and other aspects of the employer/employee relationship touched upon by state and federal law.

- April 10, 2012, Legal Quick Hit: "'Big Brother' in the Office: Helping Nonprofits Manage Employee Privacy in the Modern Workplace" for the Associate of Corporate Counsel's Nonprofit Organizations Committee
- March 21, 2012, 'Big Brother' in the Office: Helping Nonprofits Manage Employee Privacy in the Modern Workplace
- September 14, 2011, Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls
- August 11, 2011, "Focus on Misclassification: Are Your Nonprofit's Workers 'Employees,' 'Volunteers' or 'Contractors?'" Audioconference for Association TRENDS
- May 19, 2011, Performance Assessment and Management: Principles, PIPs, and Pointers (Oh, my!)
- May 18, 2011, Focus on Misclassification: Are Your Nonprofit's Workers 'Employees' or 'Independent Contractors?'
- March 29, 2011, "Dangers and Opportunities: Navigating Nonprofit Partnerships, Collaborations, Joint Ventures and More" for Better Business Bureau New York
- March 17, 2011, "Employee Handbooks – Fundamentals and Follies," hosted by Venable
- December 6, 2010, Mergers, Alliances, Affiliations and Acquisitions for Nonprofit Organizations: Financial and Legal Issues
- September 14, 2010, Legal Quick Hit: "Employee Privacy and Employer Liability in

the Age of Texting, 'Sexting,' Facebook, and Other Social Media Phenomena" for the Association of Corporate Counsel's Nonprofit Organizations Committee

- May 13, 2010, "Nonprofit Labor and Employment: Challenges, Solutions and Legal Pitfalls" audioconference presented by *Association TRENDS*
- May 11, 2010, Legal Quick Hit: "What the Developing Federal Legislative and Regulatory Agenda Means to Your Nonprofit as an Employer," for the Association of Corporate Counsel's Nonprofit Organizations Committee
- May 6, 2010, "Proactive Strategies for Minimizing HR and Other Legal Risks in Mergers, Outsourcing and Shared-Staffing" at the 2010 Finance and Business Operations Symposium, sponsored by the American Society of Association Executives
- July 21, 2009, "Labor and Employment: Challenges, Solutions and Legal Pitfalls" at an audioconference held by AssociationExecs.com
- May 21, 2009, Nonprofits in Lean Times: Employment and Labor Challenges for Nonprofits in the Economic Downturn
- January 13, 2009, Legal Quick Hit: Reductions in Force - Planning, Implementation and Communication
- December 18, 2008, RAFFA's "Managing the Economic Downturn"



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District of Illinois
U.S. District Court for the Southern
District of Illinois
U.S. Court of Appeals for the
Seventh Circuit

EDUCATION

J.D., The George Washington
University Law School, 2001
B.A., Northwestern University,
1998

Grace H. Lee is an associate with Venable LLP, where she represents clients in employment litigation and counsels employers on diverse employment matters.

Ms. Lee represents and counsels management in employment discrimination cases before the Equal Employment Opportunity Commission, various administrative agencies and federal and state courts for cases brought pursuant to Title VII, ADA, ADEA and FMLA. Ms. Lee advises clients on compliance with federal and state employment laws, and a variety of civil litigation matters including tort and contract law. She works closely with clients in the education sector, including independent schools, representing them on matters including faculty and employment contracts, the creation and governance of school boards; and the safety, welfare, and discipline of students.

ACTIVITIES

Board Member, Young Lawyers Section of the Bar Association of the District of Columbia, 2005-2008

Judicial Extern, Honorable Colleen Kollar-Kotelly, United States District Court for the District of Columbia

PUBLICATIONS

- July 2011, Top Ten Compensable Time Quandaries for Nonprofits
- July 12, 2011, Understanding Compensable Time Issues for Nonprofits under the Fair Labor Standards Act
- August 2010, District of Columbia Issues Final Regulations for Approved Sick and Safe Leave Act, Labor & Employment News Alert
- May 2010, Update On Red Flags Rules: Approaching June 1 Deadline, Independent School Law Alert
- February 24, 2010, Form 990 Fallout; Lessons Learned
- October 27, 2009, Maximizing Revenue Opportunities With Free Government Spectrum Licenses, Independent School Law Alert
- October 2009, The “Red Flags” Rule: What Independent Schools Must Know About Complying With New Requirements for Fighting Identity Theft, Independent School Law Alert
- May 21, 2009, Nonprofits in Lean Times: Employment and Labor Challenges for Nonprofits in the Economic Downturn
- January 9, 2009, Independent School Law Alert - New Federal Family and Medical Leave Act and Military Leave Final Regulations Become Effective January 16, 2009, Independent School Law Alert

MEMBERSHIPS

Bar Association of the District of Columbia

Asian Pacific American Bar Association

- November 2008, Independent School Law Alert - The New Form 990: Is Your School Ready?, Independent School Law Alert
- October 2008, Independent School Law Alert - President Signs New Law That Will Expand the Number of Employees Protected by the American with Disabilities Act, Independent School Law Alert
- September 2008, Independent School Law Alert - Preparations Independent Schools Should Consider Now for the 2008 EEO-1 Report Filing, Independent School Law Alert
- February 2008, Independent School Law Alert - No Longer Children: What to Consider When Students Reach the Age of Majority, Independent School Law Alert
- February 2008, Independent School Law Alert - The Benefits and Risks to Schools in Classifying Individuals as "Independent Contractors", Independent School Law Alert
- July 2005, Sarbanes-Oxley Whistleblower Protection for Employees of Independent Schools, *National Association of Independent Schools*
- January 2004, When Are Superiors Personally Liable for Employment Law Violations?, *Illinois Bar Journal*

SPEAKING ENGAGEMENTS

- April 10, 2012, Legal Quick Hit: "'Big Brother' in the Office: Helping Nonprofits Manage Employee Privacy in the Modern Workplace" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- March 21, 2012, 'Big Brother' in the Office: Helping Nonprofits Manage Employee Privacy in the Modern Workplace
- March 7, 2012, "Finding Talent and Labor Laws" for the Washington, DC Economic Partnership
- March 2, 2012, "Preparing for the Future: Legal Issues in Leadership Succession Planning" at NAIS Annual Conference 2012
- March 2, 2012, "Social Media: What Every School Should Know" at NAIS Annual Conference 2012
- February 27, 2012, "Legal Issues in Technology Innovation: E-Commerce, Internet and Social Media," NBOA Symposium 2012
- September 13, 2011, Legal Quick Hit: "Out of Sight, Out of Mind: Understanding Compensable Time Issues for Nonprofits at Conferences, Dinners and Other Off-Site Events" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- July 12, 2011, Understanding Compensable Time Issues for Nonprofits under the Fair Labor Standards Act
- April 21, 2011, "Time for a Tune Up: Understanding Compensable Time Issues under the FLSA," Venable Management Employment Education and Training Series (M.E.E.T.S.)
- April 12, 2011, Legal Quick Hit: "Telecommuting – Avoiding Legal Gridlock" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- February 24, 2011 - February 25, 2011, 2011 National Association of Independent Schools (NAIS) Annual Conference
- February 21, 2011 - February 23, 2011, National Business Officers Association (NBOA) Symposium 2011
- December 7, 2010, Drafting 2011-2012 Enrollment Contracts and Employment Agreements: Hot Legal Issues
- November 18, 2010, "He Said, She Said" Investigating Harassment Complaints and Other Workplace Grievances
- August 12, 2010, "Red Flags Rules Webinar" for The Association of Colorado Independent Schools
- April 27, 2010, "Social Networking: Unique Challenges for Independent Schools" seminar presented by Venable Independent School Lawyers and RCM&D Education Group Consultants

- April 21, 2010, "Social Networking: Unique Challenges for Independent Schools" seminar presented by Venable Independent School Lawyers and RCM&D Education Group Consultants
- February 24, 2010 - February 26, 2010, "Form 990 Fallout; Lessons Learned," at the National Association of Independent Schools 2010 Annual Conference
- November 18, 2009, Independent School Employment Law Update
- June 17, 2009, National Business Officers Association 2009 New Business Officer and Summer Institute
- June 10, 2009, "Records Retention and Destruction" to the Independent School Human Resources Group
- May 21, 2009, Nonprofits in Lean Times: Employment and Labor Challenges for Nonprofits in the Economic Downturn
- April 22, 2009, Venable hosts seminar on Best Practices for Non-compete Agreements for Women's Employment Law Networking Group
- April 20, 2009, National Business Officers Association - Issues in Independent School Law
- March 4, 2009, AISGW Webinar "Understanding the ADA Amendments Act of 2008"
- February 27, 2009, National Association of Independent Schools 2009 Annual Conference
- February 25, 2009, National Business Officers Association 2009 Symposium
- January 14, 2009, "Americans with Disabilities Act Amendments Act of 2008 Seminar," presentation for the Women's Employment Law Networking Group
- December 3, 2008, Independent School Human Resources Update
- November 14, 2007, National Business Officers Association Webinar on "Admissions & Enrollment Contracts"
- March 1, 2007 - March 2, 2007, National Association of Independent Schools 2007 Annual Conference
- February 27, 2007, National Business Officers Association 2007 Symposium
- 2006, "Avoiding Sleepless Nights: Hot Legal Issues for Schools" at the Adventist Risk Management, Inc. Annual Conference
- 2006, The Classrooms Legal Challenges: A Seminar for Independent Schools
- 2006, "Overview of the Family and Medical Leave Act" at the National Council of State Housing Agencies (NCSHA) Annual Conference & Tradeshow