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# FOCUS

## A Message From the President

Michael Eckhardt



Michael J. Eckhardt  
SVP, Chief Risk Officer,  
General Counsel &  
Secretary  
Wawa, Inc.

The first quarter of 2021 was filled with great substantive and social programming and strong attendance from the Chapter's 1,650 plus members. We cannot thank our volunteer practice and social chairs enough for all the time they, along with our Chapter

Administrators, Chris Stewart and Joanne Ray, and sponsors put into planning and delivering the events. Below are some of the highlights since January.

The Chapter's Board kicked off the year in January with a special session led by our friends from *Dechert* where we discussed the Chapter's *Diversity, Equity, Inclusion and Belonging* journey. *Dechert* litigation partner, Sozi Tulante, and Chief Diversity, Equity and Inclusion Officer, Satra Sampson-Arokium, led a workshop as to the characteristics of an inclusive leader and presented case studies on sound judgment and good business decisions. The Chapter's leadership looks forward to continuing the conversation as to how the Chapter can promote and advance the goals of diversity, equity, inclusion and belonging for the benefit of the Chapter's members, sponsors, the legal profession, and the greater Philadelphia community. On this front, the Chapter's leadership is also in the final phases of creating the Chapter's

initial Diversity, Equity, Inclusion and Belonging vision and mission statement, which we will share on our website in the coming months.

Our sponsors hosted over 15 substantive CLE programs in the first quarter, including our *3<sup>rd</sup> Annual GC/CLO Summit*, with a focus on Diversity and Inclusion. Our sponsors from *Cozen O'Connor, Faegre Drinker and Dechert* led discussions with over 70 General Counsel and Chief Legal Officers on topics including diversity in the Boardroom, compliance efforts related to diversity, equity and inclusion, and the positive impact of diverse teams in litigation and regulatory investigations. We concluded the Summit with a social hour and the Chapter donated \$3,000 to the Chapter's Diversity Internship Program. Our Meet Your Counterparts (MYC) events hosted by *Troutman Pepper, Stevens & Lee* and *Hogan Lovells* were attended by over 200 members, and notably the Stevens & Lee MYC in February celebrated Black History Month by learning how to cook with spices. We thank *Troutman Pepper* and *Hogan Lovells* for providing attendees with wine for the wine tasting events. We are in the final phases of matching 19 diversity interns with 18 member companies for the Chapter's 13<sup>th</sup> annual *Diversity Summer Internship Program*.

The IHCC Committee provided two full days of substantive and social programming, including a keynote session from

## In-Transition Membership

If you are a member who is in transition, take advantage of the opportunity to continue your membership **AT NO COST**. ACC will waive dues for existing members for up to one year, and offer a reduced membership rate for up to an additional two years if you are displaced but actively seeking a new in-house position. [[In-Transition/Retired Application](#)] For more information about In-Transition Membership, please visit: <https://www.acc.com/membership/become-a-member/in-transition-member>.

## Retired Membership

Recently retired ACC members may continue their membership at a **reduced rate of \$95 annually**. You can email [membership@acc.com](mailto:membership@acc.com) to request an invoice for this great rate, or submit the [In-Transition/Retired Application](#), and be sure to select the RETIRED option. For more information about Retired Membership, please visit: <https://www.acc.com/membership/become-a-member/retired-member>.

If you have questions, please contact ACC's membership department at 202.293.4103, ext. 360 or [membership@acc.com](mailto:membership@acc.com).

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**Adam Grant.** All attendees will receive Adam's new book, *Think Again: The Power of Knowing What You Don't Know* as well as other great items from our sponsors in a "swag" box to be received after the IHCC. The IHCC featured a lunch, "The Art of the Lunch" with the *Philadelphia Volunteer Lawyers for the Arts (PVLA)* and *The Philadelphia Dance Company*. This lunch was an exciting mix of performing arts, pro bono and legal education. The performance was followed by remarks from Joan Myers Brown, the founder of Philadanco! and nationally-renowned icon and visionary leader in African-American dance. This 2<sup>nd</sup> virtual IHCC had over 800 members in attendance!

Due to COVID restrictions, we found it necessary to postpone the *Spring Fling*, which was scheduled to take place in early May. We continue to monitor CDC guidance and our members' comfort level with in-person events and mitigation measures such as mask wearing and social distancing. Thank you for participating in the recent member survey. The survey

showed that 70% of our members prefer the virtual CLE option – and this does not appear likely to change unless the relevant state bar associations re-institute the prior virtual CLE limitations. This result is not surprising based on the current remote work situation of many of our members. Interestingly, 60% of members also said they would like to see a mixture of in-person and virtual CLE presentations. In-person CLE events, however, may be a more difficult proposition than an in-person social event, because almost half of our surveyed members prefer any in-person event to be held outside, which adds an additional complication to the CLE presentation. Based on the survey, we believe that attendance at in-person MYC events may be substantially similar to in-person MYC events before the pandemic began. We hosted our first in-person event since March 2020 on May 20<sup>th</sup> with a Meet Your Counterparts/Networking Cocktail Reception at Estia in Radnor. It was hosted by *Ogeltree Deakins* and there were 50 members in attendance.

We continue to develop plans to engage our members in different ways, in both virtual and in person environments, reaching out to new members, hosting quarterly new member meetings and planning "meet your leadership" type events throughout the remainder of the year. Our goal is to create more touchpoints for our members to meet with and get to better know the Chapter's leadership.

Our Board of Directors and Officers are here to serve you—we welcome your feedback, your ideas, your input, and most of all your involvement. You can reach me directly at michael.eckhardt@wawa.com or 610.358.8044. We look forward to seeing you (virtually and in person) and we sincerely hope you will take full advantage of the many benefits and become actively engaged in the wonderful opportunities that our Chapter has planned as we continue to move through 2021!

Warmest regards,  
Michael Eckhardt  
President  
ACC Greater Philadelphia

## Biden-Harris Administration's First 100 Days Expose Priorities, Lay Groundwork For New Policies

*US President Joseph Biden and Vice President Kamala Harris have consistently framed their policies with what they call the four major "crises" facing the nation: COVID-19, the economy, climate, and inequity. Many of the most important executive actions and policy proposals during the first 100 days of the Biden-Harris administration, whether by legislative proposal, executive order, rulemaking, or other policy vehicle, have been framed as an attempt to address one or more of these four policy concerns, and most address more than one.*

Day 1 of the administration started with a series of [executive orders](#) addressing matters within the president's direct authority and then continued on to legislative pro-

posals, starting with the American Rescue Plan of 2021 and continuing through the release of the proposed American Jobs Plan (focusing on infrastructure) on March 31, 2021, and the framework of the American Families Plan on April 28, 2021.

While 100 days of a 1,094-day term of office is in many respects an artifice, it historically serves as a point at which we take measure of performance. The following recap is a look back at some of the more wide-reaching and impactful (or in some cases, potentially impactful) executive orders, legislative actions, policy proposals, and other developments during the first phase of the Biden-Harris administration's term.

### CLIMATE CHANGE: ENVIRONMENTAL POLICY

The Biden-Harris administration has set its sights on an ambitious environmental policy agenda, focusing on climate change and environmental justice as key initiatives, and intends to implement its agenda through an "all of government" approach. The all-of-government strategy employs a coordinated, multi-department, multi-agency approach to address particularly complex problems.

The administration's [Executive Order on Tackling the Climate Crisis at Home and Abroad](#) established three working groups at the core of the all-of-government strategy. They bring together cabinet members and people in other key positions across

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numerous federal agencies and departments to address climate change, environmental justice, and related economic revitalization issues.

- **National Climate Task Force:** The task force will lead the all-of-government approach and implement federal actions aimed at, among other things, reducing climate pollution, delivering environmental justice, protecting public health, and stimulating job growth. The executive order permits the members of the task force to prioritize action on climate change in their policymaking and budget processes and procurement efforts and their engagement with state, local, tribal, and territorial governments.
- **Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization:** The working group is charged with coordinating the identification and delivery of federal resources to revitalize communities whose economies are focused on coal, oil, gas, and power plants. Coordination with state, local, and tribal officials; unions; environmental justice organizations; community groups; and other stakeholders will enable the group to assess opportunities to protect the interests of coal and power plant workers.
- **White House Environmental Justice Interagency Council:** The executive order provides for a variety of specific actions to be taken, including new agency offices, screening tools, and directives to strengthen and coordinate enforcement. The council has been established to develop strategies to address current and historic environmental injustice and identify clear performance metrics to ensure accountability.

More information can be found in [Biden-Harris Administration's 'All of Government' Approach to Addressing Climate Change and Environmental Justice](#).

## CLIMATE CHANGE: RENEWABLE ENERGY AND EMISSIONS

Between executive orders issued during the first week of the new administration

and the Earth Day climate change summit that brought together world leaders to share how they are addressing climate change efforts in their countries, the Biden-Harris administration is taking significant steps to create a comprehensive approach to reducing emissions. To achieve the aggressive goals and detailed plans set out by the administration during its first 100 days, we are expecting more regulation, and more actions like executive orders, that can be implemented faster than new legislation.

- President Biden is expected to establish a national Clean Energy Standard, which will be the first time the United States will establish a national standard requiring utilities to use a specific amount of renewable energy power. His goal is to get energy production to be zero emissions by 2035, and to get to carbon net zero by 2050.
- The United States announced a 52% reduction in emissions by 2030, which will require significant changes across the country. A large part of that goal rests with how the United States produces energy and delivers that energy to consumers. More information can be found in [Biden Sets Ambitious Goal for Greenhouse Gas Emissions](#).
- Another major component of President Biden's plan focuses on extending and expanding tax credits for both renewable energy production and investments. Significant private investment will be required to achieve the targets the administration has laid out and meet the demand for renewable energy nationwide. The investment tax credits are designed to help bring in this investment to renewable energy development. A significant part of the tax credits is a separate credit for energy storage, which had only been allowed as part of a solar project for past tax credits. Incentivizing energy storage projects as standalone developments could be a big change.
- Manufacturing is also an important part of the plan. The Biden-Harris administration has announced that one way to encourage economic recovery after COVID-19 is through green growth. It is incentivizing the manufacturing of

solar panels and wind-related materials in the United States to encourage a migration from purchasing those materials from Chinese manufacturers.

More information can be found in [Achieving Energy Goals in the 'New Abnormal'](#).

## CLIMATE CHANGE: ELECTRIC VEHICLES

The Biden-Harris administration is widely considered to be a catalyst for facilitation of continued electric vehicle (EV) deployment on US roads. To date, Biden has emphasized his administration's support for continued growth of EVs in two ways: through the issuance of Executive Order No. 14008 and through the White House's [proposed American Jobs Plan](#).

Executive Order No. 14008, issued in January, addresses, among other things, procurement of a federal EV fleet. Under Section 205 of the order, President Biden mandated the development of a comprehensive plan that would aim to use all available procurement authorities to achieve or facilitate clean and zero-emission vehicles for federal, state, local, and tribal government fleets.

In the American Jobs Plan, the White House proposes a \$174 billion investment to spur the development of EVs and charging infrastructure. Through that investment, the plan would establish grant and incentive programs to develop a network of 500,000 charging stations, and would aim to replace or otherwise electrify 50,000 diesel transit vehicles and 20% of existing school buses nationwide with EVs.

The American Jobs Plan also proposes funding to electrify the federal fleet of vehicles, including US Postal Service vehicles, and proposes the continuation of certain tax incentives and creation of new point-of-sale rebates for purchasers of EVs made in the United States.

More information can be found in [Legal Issues Facing Electric Vehicles Charging Projects](#).

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## ECONOMY: TAX CHANGES

President Biden, his administration, and Congress are focused on long-term economic recovery, deficit reduction, and tax reform. Current proposals cover a broad range of tax policy issues, from raising the corporate income tax rate to reforming the current international tax regime. See [Tax Reform on the Horizon](#), which summarizes key elements of certain tax reform proposals that have emerged, for more information.

Relatedly, the Made in America Tax Plan would dramatically change the US tax landscape. Changes would include an increase to the corporate tax rate from 21% to 28%, as well as various international tax changes, including to the global intangible low-taxed income, the base erosion and anti-abuse tax, and the deduction for foreign derived intangible income. These tax changes are anticipated to fund \$2 trillion needed for the [American Rescue Plan Act](#) over 15 years. The tax plan is described in a 25-page fact sheet that outlines the Biden-Harris administration's policy ambitions to improve the country's infrastructure, make targeted investments to improve the country's global competitiveness, and address climate change.

## ECONOMY: RELIEF FUNDS

President Biden signed the American Rescue Plan Act of 2021 on March 11, which provides \$1.9 trillion in relief funds across a broad spectrum of categories, including additional support for vaccine distribution, school reopenings, small business grants, tax credits, pension funds, unemployment support, health benefits, and homeowner assistance. The American Rescue Plan Act restores the State Small Business Credit Initiative, which expired in 2017. This new iteration of the program will provide \$10 billion in funding to support small businesses responding to and recovering from the economic effects of the COVID-19 pandemic. It also establishes a \$29 billion Restaurant Revitalization Fund to address the pandemic's devastating impact on the food services industry.

The act appropriates an additional \$10 billion to carry out Titles I, III, and VII of the Defense Production Act, principally with respect to COVID-19-related medical supplies and equipment. The funds are intended for use in the purchase, production (including the construction, repair, and retrofitting of government-owned or private facilities as necessary), or distribution of medical supplies and equipment (including durable medical equipment) related to combating the COVID-19 pandemic. While the allocation of these funds is not specified in the bill, the funds are intended flexibly to cover a broad range of products, including products for the detection or diagnosis of the virus, personal protective equipment (PPE), and drugs, devices, and biological products for use in treating or preventing COVID-19. Importantly, the funds also can be used for machinery, manufacturing lines, facilities, and technologies necessary to produce these items, including in government-owned or private facilities.

The American Rescue Plan Act extends unemployment benefits until September 6, 2021, and provides an additional \$300 payment per week. The mixed-earner supplement provides an extra \$100 per week for those whose income is a mix of self-employed and wages paid by their employer. The act also extends the Pandemic Unemployment Assistance (PUA) program to September 6, capped at 79 weeks; the PUA program covers the self-employed, gig workers, part-timers, and others who are not eligible to receive regular unemployment benefits. There is also a new tax-free unemployment benefits allowance that will allow recipients with an annual household income of less than \$150,000 to avoid paying tax on the first \$10,200 of benefits.

More information can be found at [Initial Key Takeaways from the American Rescue Plan Act of 2021](#).

## ESG AND ERISA FIDUCIARIES

There are a number of issues in the ERISA fiduciary space that have already garnered the new administration's attention and there are certain clues about how a

Biden Department of Labor (DOL) may impact the regulation and enforcement of ERISA's fiduciary standards. In the final weeks of 2020, the DOL finalized two regulations regarding ERISA fiduciary duties: Financial Factors in Selecting Plan Investments (the ESG rule), and Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (the proxy voting rule). But in early March, the DOL issued an enforcement statement announcing that it will not enforce either of the two new rules.

For those plans that were under a current DOL investigation related to environmental, social, and governance (ESG) usage, the DOL's announcement probably signals the end of its current enforcement effort in this area. This development is also viewed as a sign that the Biden DOL will prepare a new set of regulatory interpretations in these two areas. However, it may be some time until the DOL proposes such new guidance. There is also some uncertainty because a nonenforcement policy does not remove either rule.

Pooled employer plans (PEPs) are a new form of multiple-employer plans that were made available by the 2019 SECURE Act (with broad bipartisan support), facilitating the operation of 401(k) plan arrangements for groups of unrelated employers. The effective date for the PEP rules was January 1, 2021. During 2020, the DOL adopted a regulation on the registration of pooled plan providers, the entities that sponsor and administer PEPs, and also requested comments on prohibited transaction issues for PEP arrangements. We expect that during 2021 the DOL will continue to issue guidance on the many operational questions arising with PEPs.

The DOL has also announced that it will have a continued focus on investment advice fiduciary standards, with a particular focus on advice to plan participants and retail investors, also known as the "fiduciary rule." In February 2021, the DOL allowed one component of the Trump-era interpretation of the fiduciary rule, PTE 2020-02, to become effective. But a few weeks later, the DOL issued

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FAQs on the fiduciary rule that stated that DOL will be taking further action in this space, including by (1) amending the investment advice fiduciary regulation, (2) amending PTE 2020-02, and (3) amending or revoking other available exemptions. As a result, it is expected that the Biden DOL will focus on continuing to issue rules that impact the fiduciary rule standards and, as the Obama DOL did, will seek to expand the scope of the definition of “fiduciary” to cover more forms of investment advice.

We expect that the DOL will continue its robust enforcement efforts, including with a possible new focus on data and cybersecurity. In fact, the DOL recently issued new subregulatory guidance on the topic, which could be a further signal that DOL investigations could be coming. Enforcement efforts could also include the continuation and possible expansion of the “missing participant” investigations and possible DOL and US Securities and Exchange Commission (SEC) coordinated enforcement efforts on the new investment advice exemption and Regulation Best Interest.

More information can be found in [Hot Topics in Employee Benefits](#).

## **MAJOR LABOR AND EMPLOYMENT UPDATES**

President Biden has issued several key executive orders and the DOL has been active with rulemaking and guidance to implement the administration’s employee-friendly agenda. As expected, the DOL has also taken steps to reverse Trump administration policies and realign with Obama-era policies.

Significant executive orders started on Day 1, with the rescission of a Trump executive order that had placed ambiguous restrictions on federal contractor diversity training. This provided immediate relief to federal contractor employers from reviewing, amending, and potentially suspending diversity training. The DOL’s Office of Federal Contractor Compliance Programs (OFCCP) followed the order by halting investigations into employee complaints regarding diversity

training and by closing a hotline that received such complaints.

President Biden also issued an executive order instructing the DOL’s Occupational Safety & Health Administration (OSHA) to determine by March 15 whether to issue an Emergency Temporary Standard (ETS) regarding COVID-19. Employers have been awaiting the issuance of an ETS and this delay has caused some confusion as to whether OSHA intends to do so, but on April 26, Secretary Walsh indicated that the rule is under final review at the White House and should be issued within two weeks.

President Biden’s instruction to all agencies to freeze and review proposed regulations and regulations that were not yet effective has also impacted some DOL and Equal Employment Opportunity Commission (EEOC) rules. This included the Wage and Hour Division’s independent contractor rule: DOL has delayed the effective date and proposed to withdraw the rule, which action has been challenged. Other DOL rules are in litigation and subject to review and rescission, such as the joint employer rule and the OFCCP’s religious exemption rule. The EEOC released new proposed rules on the application of the Americans with Disabilities Act (ADA) and Genetic Information Nondiscrimination Act (GINA) to wellness programs on January 7, 2021. Those rules were also pulled back from publication in the Federal Register by the regulatory freeze implemented by the Biden-Harris administration.

On April 26, President Biden signed an executive order creating a White House task force to promote labor organizing. The task force will be led by Vice President Kamala Harris, with Secretary of Labor Marty Walsh as vice chair and other cabinet officials and top White House advisers serving as members. The task force will issue recommendations on how the government can use existing authority to help workers join labor unions and bargain collectively, and recommend new policies aimed at achieving these goals.

Two key policies for this administration are to raise the minimum wage to \$15

and require employers to provide paid sick/FMLA leave. The \$15 minimum wage proved to be a sticking point in the stimulus package, so President Biden announced on April 27 that he will issue an executive order increasing the minimum for certain workers on covered federal contracts. Similarly, if paid leave legislative efforts fail, President Biden could issue an executive order requiring an expanded group of federal contractors to provide paid sick leave. Congress’s expansion of tax credits under the American Rescue Plan Act to employers with less than 500 employees who voluntarily provide COVID-19-related sick and family leave was another route to partially achieve this policy goal.

Beyond executive orders and rulemaking, DOL has issued subregulatory guidance that may have slipped under the radar of some observers. Examples include a new set of FAQs posted on Wage and Hour’s website that include new COVID-19-related guidance, and reinstating the agency’s approach to seeking liquidated damages in pre-litigation investigations. DOL enforcement of these and other policies will be bolstered by the infusion of \$200 million in appropriated funds under the American Rescue Plan Act. Congress earmarked this additional money for certain DOL agencies “to carry out COVID-19 related worker protection activities, and for the Office of Inspector General for oversight of the Secretary’s activities to prevent, prepare for, and respond to COVID-19.”

## **IMMIGRATION**

The Trump administration implemented more than 1,000 immigration-related changes, radically altering the current immigration system. These changes were undertaken through executive actions, policy memoranda, and regulations. In a sharp about-face, the Biden-Harris administration quickly announced a series of immigration-related short-term and long-term measures favoring immigration. This included a freeze on all published regulations not effective on January 20, 2021; withdrawal of all regulations not published by January 20, 2021; the intro-

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duction of immigration legislation; and the appointments of new heads of immigration agencies. President Biden revoked the Trump administration's travel and immigration restrictions on a group of 13 countries, most of which are predominantly Muslim or African. He ordered the US Departments of Justice and Homeland Security to take "all appropriate actions" to safeguard the Obama-era Deferred Action for Childhood Arrivals program that offers work permits and deportation relief to more than 640,000 undocumented immigrants brought to the United States as children (so-called "Dreamers"). More information can be found in [Biden-Harris Administration Proposes Sweeping Immigration Changes on Day 1](#).

In addition, after the US District Court for the Northern District of Illinois lifted its stay and vacated the Trump administration's public charge rule, the US Citizenship and Immigration Services (USCIS) announced on March 9 that it would no longer apply the rule. The public charge rule essentially instituted a wealth test for individuals seeking lawful permanent residence, and required highly burdensome documentation of financial resources for applicants. The

Biden-Harris administration announced that it would no longer defend the public charge rule in court, and USCIS has since formally withdrawn the rule.

President Biden rescinded Presidential Proclamation 10014, the prior administration's ban that suspended the issuance of certain green cards overseas and barred entry into the United States of certain groups of immigrants. Effective immediately, these individuals should be eligible to enter the United States as permanent residents, and US consular posts should begin issuing immigrant visas to these applicants. More information can be found in [President Biden Revokes Ban Suspending Entry of Certain Immigrants](#).

The administration allowed Presidential Proclamation 10052 (PP 10052) to expire as of March 31, 2021. PP 10052, implemented by the previous administration in June 2020, had suspended the issuance of certain nonimmigrant or temporary visas in several categories. The expiration of PP 10052 means that individuals who were previously subject to the proclamation will no longer be prohibited from applying for a visa in certain categories, nor will such applicants be required to seek National Interest Exceptions (NIEs) to the proc-

lamation. This will be highly beneficial for companies and employees seeking to resume global mobility. More information can be found in [Presidential Proclamation 10052 Expires](#). Regional COVID-19-related travel restrictions are still in force.

Finally, on April 27 USCIS reinstated its longstanding deference policy, which had been rescinded under the Trump administration. The deference policy requires immigration adjudicators to give deference to prior decisions in the same visa matter, absent fraud or material changes. The reinstatement of the deference policy will increase stability and predictability in the immigration decision-making process and ensure that key talent can expect visa extensions for the same occupation and the same employer to be approved.

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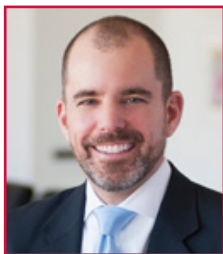
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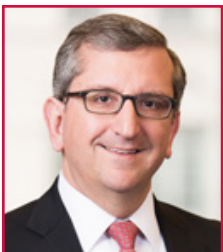
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## In Case You Missed It

### MYC Networking Reception @ Estia

May 20, 2021

Our first IN-PERSON *Meet Your Counterparts* event in almost a YEAR took place on May 20<sup>th</sup>, and by all accounts it was a smashing success! Almost 50 members gathered on a warm, sunny evening in a beautiful outdoor tent at *Estia* in Radnor for some much-needed (and missed) networking. The food was plentiful and fabulous (as always), the drinks refreshing and the conversation flowing. We would like to thank our sponsor for the evening, Ogletree Deakins. Look for more in-person MYC events coming in the months ahead!



## 2021 Upcoming ACCGP Events

Visit [ACC Greater Philadelphia](#) for the most current event details or to register for chapter events.

### JUNE

**June 11**

GC/CLO Lunch Club  
in-person at Liberty Hill

**June 15**

*Tips From the Top* with Cozen  
O'Connor  
with wine & vinegar tasting/  
networking - virtual

**June 16**

Data Privacy Roundtable with Fisher  
& Phillips

**June 23**

Contracts & Commercial Law  
CLE Institute with Flaster/  
Greenberg, Obermayer Rebmann, &  
BakerHostetler - virtual

**June 29**

Meet Your Counterparts  
Networking Reception with  
Greenberg Traurig  
in-person – The Assembly Rooftop  
at The Logan

### AUGUST

**August 4**

Women's Event with  
Cozen O'Connor

**August 11**

Ethics & Compliance  
CLE Institute with  
Hogan Lovells & Ballard  
Spahr

**August 12**

Meet Your Counterparts  
Networking Reception  
with Armstrong Teasdale

**August 17**

Litigation CLE Webinar  
with Stevens & Lee

**August 26**

Roundtable with  
Schnader Harrison

### JULY

**July 8**

Labor & Employment Webinar with  
Faegre Drinker

**July 13**

Meet Your Counterparts Networking  
Reception with Fisher & Phillips  
in-person at Positano, Center City

**July 15**

Real Estate CLE Webinar with  
Morgan Lewis

**July 20**

IP CLE Institute with Armstrong  
Teasdale, Stradley Ronon, & Akin  
Gump

**July 22 (tentative)**

Family Night Softball Game

**July 27**

IT/Privacy Webinar w/Hogan Lovells

**July 29**

Meet Your Counterparts Networking  
Reception with Morgan Lewis

Be on the lookout  
for calendar  
updates!

# Key Considerations If the World Trade Organization Decides to Waive IP Rights for COVID-19 Vaccines

By *Armstrong Teasdale Partners Ted Behm and Dhruv Kaushal, and Associate Kevin Gale*

Ambassadors of the World Trade Organization (WTO) have agreed on the need for wider access to COVID-19 vaccines and treatments, according to WTO spokesman Keith Rockwell. One of the strategies being considered is to issue a temporary waiver of intellectual property (IP) protections, which the WTO panel on intellectual property will discuss at a “tentative” meeting in late May and a formal meeting scheduled for June 8-9. On Wednesday, May 5, 2021, the United States Trade Representative, Katherine Tai, announced that the Biden administration supports efforts to waive intellectual property protections for COVID-19 vaccines. While it’s unclear whether the WTO will implement this measure and in what form, it’s nearly certain that waiving IP rights will not result in any significant increase in the near-term supply of COVID-19 vaccines. At the same time, there is serious concern for future innovation from developers of novel therapeutics and investment decisions that support these efforts.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement provides certain minimum standards of IP protection on WTO member countries, but it also provides the WTO certain safeguard provisions that allow waiver of certain IP rights designed to enhance access for developing countries to public health needs during extreme circumstances including public health crises.<sup>3</sup> Included in those safeguards is the right to grant compulsory licenses for patented inventions without the consent of the patent holder, and the right of countries to avoid compliance with the normal import and export limitations for patent-protected pharmaceuticals. Section 7 of the agreement demands particular attention because it provides for a waiver of “undisclosed information” including proprietary information submitted to regulatory agencies in order to obtain marketing approval, such as chemistry, manufacturing and controls (CMC) information in the U.S. and

Europe.<sup>5</sup> Members are required to protect such data against unfair commercial use except where deemed necessary to protect the public.

The idea of waiving IP rights related to COVID-19 was originally proposed to the WTO in October 2020 by India and South Africa. The request includes a waiver of protections provided by patents, copyrights, industrial designs and undisclosed information, including trade secrets and test data, for vaccines, drugs, diagnostics and other technologies. However, the proposal failed to meet the consensus requirement for approval with opposition coming from the European Union, the United Kingdom and other developed countries, and until now, the United States. While the United States has indicated support for a waiver, a WTO approval is not certain, since strong opposition remains from other developed countries, including the European Union. Also, according to WTO Director-General Ngozi Okonjo-Iweala, a proposed revised agreement has yet to be prepared and negotiated.

With the main goal of providing improved access to quality COVID-19 vaccines and medical care to developing countries during the pandemic, it’s questionable whether waiving IP rights would prove successful. Delays in providing a significant increase in global supply of vaccines can be expected from negotiations for the WTO to reach the required consensus, from complications for developing manufacturing facilities and technology transfer, and gaining approvals to market complex viral and RNA-based vaccines. Arguably, by the time the effect of any waiver of IP rights would be realized, the supply of vaccines from currently and newly approved manufacturers could well meet or exceed global demand. Market forces already have many companies capable of producing COVID-19 vaccines at or near capacity, and government action and market participants are teaming up to maximize manufacturing efficiency.

For example, in India, the world’s largest vaccine manufacturer, the Serum Institute of India that manufactures AstraZeneca’s COVID-19 vaccine, and Bharat Biotech have had difficulty meeting demand due to capacity issues and indicated that because “vaccine manufacturing is a specialized process, it is therefore not possible to ramp up production overnight.” Whereas Merck recently announced that the Biomedical Advanced Research and Development Authority (BARDA) within the U.S. Department of Health and Human Services (HHS) will provide Merck with nearly \$270 million to enhance manufacturing of COVID-19 vaccines and medicines, while Merck also reached an agreement with Janssen Pharmaceuticals, Inc. to support manufacturing and supply of Johnson & Johnson’s COVID-19 vaccine. Similarly, the BioNTech Pfizer partnership has recently announced that in 2021 it plans to nearly double the originally announced production of its COVID-19 vaccine.

Multiple COVID-19 vaccines have been developed using novel nucleic-acid-based therapeutic platforms. A key question for the developers of these platforms is how proprietary information they have submitted to regulatory agencies will be treated under a TRIPS waiver. Part II, Section 7 of the TRIPS agreement protects information provided to regulators on the quality and consistency of drug products, including CMC information, from disclosure and unfair commercial use. Because CMC information may be critical to the production of nucleic acids used in COVID-19 vaccines, a future waiver would be expected to limit protections on disclosure and commercial use. At the same time, this CMC information may apply to nucleic acid components of other medicines built on the same platforms as the COVID-19 vaccines, and the waiver of TRIPS protections on unfair commercial use may allow competitors to copy or reverse engineer these other medicines even after the pandemic is over.

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It will be interesting to see how the Biden administration seeks to balance the desire for rapid distribution of CMC information to facilitate an increase in vaccine production against the desire to protect platform technologies that have been developed through significant investments over many years.

The effects of losing control of intellectual property rights can also prove devastating

on the value of affected companies, many of which significantly factor into their national economies or are critical for the development of novel therapeutics. The development of novel therapeutics may also be severely thwarted, especially in relation to a newly emerging health crisis. With the realization of a waiver of IP rights for technologies that are developed to combat the current COVID-19 pandemic,

companies that are in the business of novel therapeutic discovery and development will have to weigh that risk into future decisions to combat newly emerging health crises. Investors will also be considering a similar risk/benefit analysis when considering their investments, especially in early-stage drug development companies that have been responsible for many novel therapeutics and related products.



## New Board Member Spotlight

**Tara Gibbons, Senior Legal Counsel, Wawa, Inc.**

**1. In what year did you start in your current position?**

*I started as Legal Counsel at Wawa in 2012, and in my current position, Senior Legal Counsel, in 2018.*

**2. In what year did you first work in-house?**

*I started in-house at Wawa in 2012.*

**3. What law school did you attend?**

*I attended Villanova Law School.*

**4. Where did you attend college and graduate school? What degrees do you hold?**

*I attended Brown University and majored in Political Science and Anthropology.*

**5. What do you consider to be your most pivotal career move?**

*Coming to Wawa! Because of the change from being a law firm attorney to becoming an in-house attorney and because Wawa is an amazing place to work.*

**6. What's the best thing about your current job?**

*I love the broad nature of the work that I do and being engrained in the business, not just the legal terms of a specific deal. The collegial and collaborative environment on the Legal Team at Wawa keeps me engaged and excited to come to work every day.*

**7. What's the worst job you've ever had?**

*I honestly can't think of the 'worst' job I have had. Each has taught me either a skill set or life lesson and hopefully made me a better employee and person along the way.*

**8. What's the most valuable life lesson you still apply today?**

*Learn. No matter what job you have or experience you go through, even when you think it is not taking you anywhere or advancing your career, you can learn something. That will make you more valuable as an employee and more well-rounded as a lawyer.*

**9. What do you consider to be the best thing about ACC membership?**

*The education opportunities that ACC provides are invaluable. I take away great learnings from the educational programs geared towards in-house counsel.*

**10. How do you achieve work/life balance?**

*I definitely do not have any secrets to success on work/life balance! I am very lucky to work at a company and on a Team that values family and the commitments family creates. I think 2020 blurred the lines between work and family for a lot of folks, I certainly am no exception. My resolution is to be more present and in the moment with both my family and my work.*

**11. If I were not practicing law, I'd... \_\_\_\_\_**

*Be exploring a career in interior design.*

**12. My favorite vacation spot is \_\_\_\_\_**

*Stowe, we love to ski!*

**13. A place I've never been but would most like to visit is \_\_\_\_\_**

*Thailand (whenever we get to travel again...).*

**14. My all-time favorite movie is \_\_\_\_\_**

*I love holiday movies, and it would be a toss-up between Elf and Home Alone.*

**15. Even people who know me might be surprised to learn that... \_\_\_\_\_**

*Although it isn't my primary vehicle, I still have and drive my first car which is over 20 years old!*

**16. If applicable, please tell us about your pet(s): \_\_\_\_\_**

*We are an animal loving family – we have 2 dogs (Rosie, a Portuguese Water Dog, and May, a Maltese) and a bird (Soleil, a 27-year-old Cockatiel!).*

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**Kristine Clark**

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# Positively Legal: The Power of Unfocus

By Caterina Cavallaro, Standards Australia, General Counsel

When we think of excellence and achievement, we often think of being focused and staying on task — following our “to do” lists, timetables, and calendar reminders. However, extensive focus uses a lot of energy and can exhaust our brains. Research shows that the brain operates optimally when it toggles between focus and unfocus, needing both to allow the unconscious brain to make connections and solve problems, “develop resilience, enhance creativity, and make better decisions.”

## The shortcomings of a focused mind

Richard Davidson, a neuroscientist at the University of Wisconsin, calls focus an essential ability. During sharp focus, he says, key circuitry in the prefrontal cortex gets into a synchronized state with the object of focus, which he calls “phase-locking.” For example, if “people are focused on pressing a button each time they hear a certain tone, the electric signals in their prefrontal area fire precisely in sync with the target sound. The better your focus, the stronger the neural lock.”

There are benefits to sharp focus, but this focus can be limiting, and we can miss making connections. For example: Sharp focus is like the beam of a flashlight. “While a bright and narrow beam of light cast straight out in front of you is terrifically helpful if that’s where you need to be looking,” Dr. Srinii Pillay writes in his book *Tinker Dabble Doodle Try: Unlock the Power of the Unfocused Mind*, “what about your peripheral vision and the light you might need to see into the murky middle distance?”

Another example is the well-known invisible gorilla study. Participants were asked to watch a basketball game between a team wearing white and a team wearing black. Participants were told to count how many times the white-shirted team passed the ball to one another. A person in a gorilla suit walked right through the



game and most participants, focusing on counting the passes, did not notice the gorilla.

The balance to such sharp focus is “defocused attention,” something often identified in highly creative people who have a “wider spotlight that gives them access to more elements.” These people then have “greater potential to generate more unusual ideas, as they have a wider array of elements than can be combined with the focus of their attention.”

But we don’t need to be a creative genius to have a “eureka” moment, generate novel ideas, and solve problems. We can all do it by learning to access our default mode network (DMN), a collection of regions that are active during rest and are usually deactivated during focused tasks.

## The default mode network

Pillay thinks access to the brain’s DMN, known as the “unfocus network,” is just as important as the focus network. The process of “unfocusing” does the following:

- Recharges your brain, reducing amygdala activation and creating calmness;
- Activates the prefrontal cortex and enhances innovation;
- Improves long term memory; and
- Increases activity in the DMN.

There are practical ways to engage the DMN and Pillay suggests first introducing them during periods of the day when the brain would be in a natural slump like right after lunch or in the middle of the day.

## Positive constructive daydreaming

Positive constructive daydreaming is a specific type of mind wandering for a short period of time, usually 15 minutes or so, and is characterised by “playful, wishful imagery, and planful creative thought” that serves four adaptive functions: 1. future planning, 2. creative incubation and problem-solving, 3. attentional cycling (when an individual can flexibly switch between various informational streams), and 4. dishabituation (which improves learning since an individual is taking short, recuperative mental breaks from externally demanding tasks).

This type of mind wandering that has been shown to help creativity. “While our minds wander,” writes Daniel Goleman in his book *Focus: The Hidden Driver of Excellence*, “we become better at anything that depends on a flash of insight, from coming up with imaginative wordplay to inventions and original thinking.” Positive constructive daydreaming is distinguished from other less productive mind-wandering like negative rumination.

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During this time, you should engage in a low-key activity such as knitting, gardening, or going for a walk and let your mind wander to something positive like lying on a yacht or a beach or going for a run through the woods with your dog. This wandering then helps us “wander over to a solution.”

In addition, going for a walk on a curved path has been also shown to increase creativity. A 2012 study by Angela K. Leung and colleagues tested three groups, one walked in a rectangle, one sat down, and the last walked freely. The group walking freely outperformed the other two in the mental test they were given.

A five-to-15-minute nap has been shown to give one to three hours of clarity and should be done a few times a week. Occasionally, if you need it for creativity, try napping for 90 minutes.

Doodling can also increase creativity. It can be done during a conference call as it helps a bored or tired mind to stay awake a little longer. A 40 person study in 2009, found that those who doodled during a 2.5 minute dull and rambling voice mail message recalled 29 percent more details from the message when tested.

### **Block out time for undemanding tasks and holidays**

Block out time for daily breaks you find undemanding like walking or doing

crosswords, make time for events to break up the monotony of the week, and ensure you take regular vacations.

Goleman describes a conversation he had with Salesforce CEO Marc Benioff who said, “New ideas won’t appear if you don’t have permission within yourself.” When serving as VP at Oracle, Benioff said he took a month off in Hawaii to relax which, “opened up my career to new ideas, perspectives, and directions.” It was during one such holiday that Benioff decided to quit Oracle and start Salesforce.

Actively engaging our DMN can help us to find solutions to unsolved problems, become creative, and enjoy ourselves in the process.

## **ACC News**

### **Th ACC Xchange 2021: June 15-17**

As an ACC member, you already know that ACC is the place to go for best practices and skill development in law department management and legal operations. That’s why, if you are looking to hone your leadership game, you know you won’t find this targeted, advanced-level training anywhere else, but ACC. Join us to Xperience the Xchange, a one-of-a kind 2-day event designed to give in-house legal executives the keys to drive innovation and transform the law department. [Register today!](#)

### **ACC Executive Leadership Institute: 30 August–2 September (Chicago, IL)**

There are two weeks left to give your top performers an exclusive professional development opportunity. Help them reach the level needed to one day lead your department. Nominate them to attend the 2021 ACC Executive Leadership Institute. [Nominations end 31 May!](#)

### **ACC In-house Counsel Certification Program**

- 7–17 June
- 12 July – 5 August
- 12–22 July
- 23 August – 2 September

The *In-house Counsel Certification Program* covers the core competencies identified as critical to an in-house career. This virtual training is a combination of self-paced online modules and live virtual workshops. The workshops will be conducted over a two-week period, four days a week for three hours each day.

### **Mini MBA for In-house Counsel: June Series**

In today’s evolving climate, it is more important than ever for in-house lawyers to take on a more strategic role, investing in the company’s ability to grow. ACC and the Boston University Questrom School of Business are bringing to you virtually their popular *Mini MBA program*. Master the executive skills needed to ensure that you—and your organization—continue to move forward.

### **The Global Women in Law & Leadership Virtual Conference and Honors Program: June 21-23**

The ACC Foundation would like to honor women in the legal profession! This event, taking place virtually, includes programming focusing on soft skills, innovative leadership, and tangible takeaways to help advance female lawyers in today’s busy world. [Reserve your spot today!](#)

### **ACC Corporate Counsel University®: June–August**

Registration is now open for the *2021 Corporate Counsel University®* (CCU). It will be held in Summer 2021, starting the week of June 14. This comprehensive education program is specifically designed for those new to in-house practice or in-house lawyers with less than five years of experience, as well as those who simply need to sharpen their basic practice skills.

### **2021 ACC Virtual Annual Meeting: October 19-21**

It’s here! The 2021 ACC Annual Meeting program is ready and it’s jam-packed with valuable substantive and career-focused content you don’t want to miss. [Check it out!](#)

### **2021 Cybersecurity Summit On Demand**

Cybersecurity touches every aspect of consumer and corporate culture, and vulnerabilities present grave financial, legal, and reputational risks. Preventing, preparing for, and responding to data breaches in real time are chief concerns in today’s workforce. This *on demand conference programming* will keep you apprised of the latest threats and innovations. The recordings will complement your broad understanding of cybersecurity strategies and principles, enabling you to become a more well-rounded, focused, and effective practitioner.

# Sponsors for 2021

We thank our 2021 Sponsors for their support of our chapter. Without them, we could not achieve the levels of success that the chapter consistently reaches.

## DIAMOND



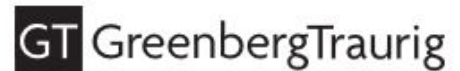
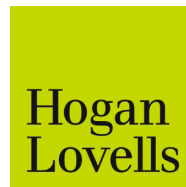
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## À LA CARTE



# #bestIHCCever Did Not Disappoint!

By Dan Slawe, President-Elect, ACCGP

Expectations and enthusiasm for ACC Greater Philadelphia's 13<sup>th</sup> Annual In-house Counsel Conference were lofty – with many predicting that it would be the #bestIHCCever. The chapter's flagship education and networking event, held virtually on April 21<sup>st</sup> and 22<sup>nd</sup>, did not disappoint! The numbers were record-breaking: Nearly **1000 attendees** logged in to **56 sessions** to see **143 speakers** from **31 sponsors** and partners.

**Day 1** highlighted the Chapter's commitment to diversity in the legal profession and was bookended by a **Diversity Breakfast** (presented by Emerald Sponsor Dechert LLP) during which local legal leaders discussed their

strategies for making their organizations more diverse and inclusive, and a **Casino Night** (presented by Silver Sponsor Duane Morris, LLP) which raised **thousands of dollars** for the chapter's Diversity Initiatives. During lunch, attendees were presented with a first-ever IHCC arts performance: "A Movement for Five," a moving and poignant modern dance number from Philadanco! inspired by the events surrounding the Central Park 5. This was followed by a robust discussion of the role pro bono organizations like **Philadelphia Volunteer Lawyers for the Arts (PVLA)** play in keeping the arts alive in Philadelphia and beyond.

**Day 2** kept the energy high with a Keynote Breakfast from **Lawyers Concerned for Lawyers** during which attendees learned about impairment in the legal profession – including the mental health impact of the COVID-19 pandemic. Keynote Speaker **Adam Grant** treated attendees to a lunchtime exploration of ways we can all question our assumptions and make our professional and personal lives more open to new ideas. Add to this other great opportunities like **Morning Yoga**, **IHCC Lounge**, **Speed Networking**, a **Virtual Expo Hall** (with raffle and scavenger hunt prizes), a closing **Networking Reception** and the ever-popular **Swag Box**, and the result is a blockbuster conference that ACC Greater Philadelphia members won't soon forget!



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