

GC Cheat Sheet: The Hottest Corporate News Of The Week

By **Michele Gorman**

Law360 (March 23, 2018, 4:39 PM EDT) -- President Donald Trump said he will likely nominate the solo practitioner who took on UPS in a pregnancy discrimination case that went all the way to the U.S. Supreme Court as general counsel of the U.S. Equal Employment Opportunity Commission, and female general counsels shared with Law360 how they're transforming their legal departments and other women's professional lives. These are some of the stories in corporate legal news you may have missed in the past week.

Facebook Sued Over Trump-Linked Research Firm's Data Use

A Facebook user filed a proposed class action Tuesday against the social network in California federal court claiming that the company illegally misled users by negligently allowing a Donald Trump-linked data firm to sweep up personal information on some 50 million of them.

Lauren Price, of Maryland, claims in the suit that Facebook and Cambridge Analytica, a data research firm that did work for Trump's 2016 election campaign, violated California competition law's ban on unfair business practices when Cambridge hoovered up personal data from people who took a psychological testing quiz as well their unwitting friends.

Researcher Aleksandr Kogan, who was hired by Cambridge and designed the quiz, turned the pool of harvested data over to the research firm, which then used it to create psychological profiles of potential Trump voters who were then targeted with ads, according to recent media accounts. Facebook has said that Kogan and Cambridge "deceived" the company and violated its terms of service by handing the data over to political operatives.

"This case involves the absolute disregard with which defendants have chosen to treat plaintiff's personal information," Price says in her complaint. "Facebook, for its part, knew this improper data aggregation was occurring and failed to stop it, or actively avoided discovering such knowledge in order to profess supposed ignorance."

Lawyers Leery of Zero-Tolerance Policies Following #MeToo

Given the #MeToo environment, a zero-tolerance policy on sexual harassment can seem like the best way to go, but legal experts speaking at an industry panel in New York City on Tuesday argued that such an approach can be rife with potential to backfire.

Companies taking a zero-tolerance stance risk exposing themselves to liability over firing an alleged harasser without an appropriate investigation and risk creating a "boomerang" situation in which men are wary to engage with their female counterparts, thereby hurting the female employees' chances to advance, according to legal experts speaking at a panel titled "Challenges in the World of #MeToo," put together by Stroock & Stroock & Lavan LLP.

"This idea of zero tolerance is a gray area without bright lines," said Shira A. Scheindlin, a former New York federal judge who currently serves as of counsel at Stroock.

Many companies, feeling pressure from both the media and investors, have quickly responded to the spotlight put on sexual harassment issues by concluding that even boorish behavior can be business and reputation killers, according to the experts on the panel.

With Travel Ban 3.0, Attorneys Advise Staying Home

The Trump administration has not offered clear guidance on how to obtain a waiver from the third iteration of its travel ban and gain entry to the U.S., leaving most attorneys saying immigrants from the affected countries who are already in the U.S. should avoid international travel altogether.

The so-called Travel Ban 3.0, enacted via executive order in September, places travel restrictions on foreigners from eight countries: Chad, Iran, Libya, North Korea, Syria, Venezuela, Somalia and Yemen. The U.S. Supreme Court agreed in January to review the legality of the ban, but has allowed it to go into full effect while the justices deliberate.

The ban permits affected individuals to obtain a waiver to enter the U.S. if an immigration official determines that it is "in the national interest," if "denying entry would cause undue hardship" and if entry does "not pose a threat to the national security or public safety of the United States."

But that criteria has proved nearly impossible to meet. More than 8,400 individuals affected by the ban applied for nonimmigrant and immigrant visas between Dec. 8 and Jan. 8, and only two waivers were approved as of Feb. 15, according to State Department data.

Trump Taps Atty in Supreme Court Pregnancy Case for EEOC GC

President Donald Trump said he intends to nominate Sharon Fast Gustafson, the solo practitioner who took on UPS in a pregnancy discrimination case that went all the way to the U.S. Supreme Court, to a four-year term as general counsel of the U.S. Equal Employment Opportunity Commission.

Gustafson has been a solo practitioner for 22 years, representing clients before the EEOC and in federal court on matters including workplace discrimination, Family and Medical Leave Act, wage and hour and whistleblower protections, among others, according to her website.

She'd replace current EEOC general counsel David Lopez, who was sworn in on April 8, 2010, and was nominated twice for the post by former President Barack Obama, according to the watchdog's website. Lopez was the first EEOC field trial attorney to be appointed to the leadership role, according to the commission.

Gustafson worked for Jones Day from 1991 until she went into practice on her own in 1996, handling cases in Virginia, Maryland and Washington, D.C., according to the White House.

How Female GCs Are Transforming Legal Departments

At the beginning of her career, Helen Browne said she wasn't allowed to wear pants and often faced colleagues who questioned her employment since she was married to a working man. Now, as group general counsel of French multinational insurance firm AXA, she said it's "hard to believe in my professional lifetime that things have changed so much."

Progress has been made on gender equality in the legal profession. The number of female GCs in the Fortune 500 has risen almost annually since the Minority Corporate Counsel Association first published its General Counsel Survey in 1999. In 2000, just 43 women led legal departments in the Fortune 500. That number more than tripled by 2017, with 132 female GCs in the biggest U.S. corporations, according to the MCCA's most recent diversity report.

Still, while leaders of many businesses and corporate legal departments around the world have implemented policies and provided incentives in attempts to diversify their staff, female lawyers say there is much work to be done to reach gender equality, and many of them — sometimes along with male colleagues — have put forth their own efforts to help internal and external female counsel grow their careers in the legal profession.

"It hasn't always been fantastically easy, but you have to find your strategies around prejudice," said Nina Macpherson, who started working at telecommunications company Ericsson in 1996, and 15 years later began leading its global legal affairs division.

Q&A: 15 Minutes With PayPal's General Counsel

A year ago in February, Wanji Walcott became PayPal Holdings Inc.'s general counsel and senior vice president. She had previously served as the company's vice president of legal product.

Before her arrival at the online payments company in 2015, she worked at American Express Co. and launched a successful pro bono effort in two cities. Once at PayPal, she initiated another pro bono program in the corporate legal realm, this time across the world that included dozens of global members from her team.

"Unbeknownst to me, I would be called upon to do something bigger and better than I had done before, which has really been an honor," she said.

In a **recent interview with Law360**, Walcott said PayPal stands out from its competitors because of its purpose-driven mission and focus on customers in every business decision. She also shared how she explains complicated legal matters to nonlawyers and which book she recommends to attorneys hoping to enhance their craft.

How You Can Minimize Legal Risk When Firing Alleged Harassers

Conductor James Levine's decision to sue the New York Metropolitan Opera earlier this month after he was fired over allegations he molested young musicians shows employers not only run the risk of being sued when they ignore allegations of workers' misconduct, but when they take action as well.

Because the law obligates employers to investigate and take action to end harassment and assault, workers like Levine will generally have a tough time proving they were wronged, attorneys say. But they say there are a handful of steps employers can and should take to reduce their potential exposure when they decide to fire someone accused of harassment or worse.

"There's nothing in the law that requires, if you're an employee at-will, that you get due process," said Anderson Kill PC attorney Dona Kahn. "But it's incumbent, I believe, on companies and universities and institutions, not to rush to judgment."

Stop Legal Monopoly With Antitrust Review, Law Professor Suggests

The current system of regulating the legal profession in the United States has created a monopoly that drives prices up and leaves too many people without a lawyer, according to **one** law professor who said that subjecting the sector to federal antitrust law may be the way forward.

The U.S. system of regulating the legal profession "reduces competition, constrains information and maintains artificially high prices," leaving as much as 80 percent of the American population without the help of a lawyer, says University of Houston Law Center professor Renee Newman Knake in the draft of a forthcoming paper to be published in the Washington Law Review.

"Lawyers enjoy an exclusive monopoly over their craft, one unlike any profession or industry," Knake says in the draft. "They bar all others from offering legal representation. In most jurisdictions, lawyer-judges draft, enact and enforce their own professional conduct rules, as well as preside over any legal challenge to the rules' validity."

The result of self-regulation is an industry in which, she says, the consumer market is denied "affordable, accessible, widely-adopted legal services."

Beyond #MeToo: How Women Lawyers Are Organizing Online

Inspired by the #MeToo movement sweeping the nation, California employment lawyer Beth Mora attempted earlier this year to rally members of her local bar association to anonymously share their own #MeToo-in-the-law moments.

She expected to receive around 50 such stories after sending a mass email to the members of the Contra Costa County Bar Association, but she got only five. Three were from men.

"I got several phone calls and emails from people telling me: 'There's no way I can even say "me too," because I have a boss who will just say ... "Is that her?"'" Mora said. "They were just so afraid of retaliation."

Lawyers — in particular, female lawyers — often tend to shy away from publicly sharing personal stories of sexual harassment or even from generally supporting the #MeToo movement out of fear it will draw unwelcome scrutiny from superiors and clients.

But this hasn't stopped women lawyers from seeking the same kind of communal catharsis that the #MeToo movement has afforded others. They're turning to online outlets that offer some anonymity, and these national platforms are providing a strength in numbers that a local bar association cannot.

Experts See Trouble Ahead For EU 'Digital Services Tax'

Digital advertising and sharing-economy platforms are in the sights of a proposed new EU tax, which in an unprecedented move would be levied on revenue rather than profit, according to documents seen on March 16 by Law360.

But the proposal faces a long passage to becoming law and is likely to draw stiff resistance from some of the world's most powerful companies. Several European Union member nations could also object, either due to their profitable relationships with those companies or because of more general opposition to the precedent of taxing revenue.

Under draft laws due to be formally proposed by the European Commission on March 21, the new tax will be levied as a percentage of revenue generated from three kinds of digital activity: placing user-targeted advertising, creating interfaces for users to interact with each other or transmitting users' data. The rate will be set at 3 percent, according to documents seen by Law360.

The digital service tax, or DST, would capture business models favored by the likes of Google LLC, Facebook Inc., Airbnb Inc. and Uber Technologies Inc., though subscription-based services such as Netflix Inc. or cloud computing would be out of its scope. Taxable revenue would be calculated "net of value-added tax and other similar taxes," the draft law says.

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