

## GC Cheat Sheet: The Hottest Corporate News Of The Week

By Michele Gorman

*Law360 (January 15, 2021, 2:40 PM EST)* -- Microsoft's general counsel said the company's diversity bonus program for its outside law firms has shown significant results, with an increase from 34% hitting diversity benchmarks in 2008 to 63% last year, and the U.S. Equal Employment Opportunity Commission said noncitizen overseas workers don't have to be counted as employees for age bias disclosures.

These are some of the stories in corporate legal news you may have missed in the past week.

### Diversifying Leaders Is a Big Challenge in Law, Microsoft GC Says

Microsoft Corp.'s bonus program for its outside law firms that diversify has shown significant results, with an increase from 34% hitting diversity benchmarks in 2008 to 63% last year.

"The biggest challenge is scale," Microsoft general counsel Dev Stahlkopf said Thursday when speaking on a panel on equality in law and the push for diversity, part of Reuters' weeklong NEXT program. "There are only so many firms that we work with. How do we scale it broadly across the [legal] industry?"

Finding more diverse law firm leadership has come more slowly, she said, although the pace has been quickening: a five-point increase in the last five years.

"I think we'll see it increase more quickly in a couple more years," added Stahlkopf, who joined the Redmond, Washington-based tech giant in 2007 after working in private practice with Perkins Coie LLP near Seattle.

### EEOC Says Noncitizen Overseas Workers Exempt From Age Bias Disclosures

The U.S. Equal Employment Opportunity Commission said Thursday that noncitizen overseas workers don't have to be counted as employees for age bias disclosures mandated under the Older Worker Benefit Protection Act.

The OWBPA, a 1990 addendum to the Age Discrimination in Employment Act, requires employers engaging in a group layoff — and asking those workers to waive their right to age bias claims — to disclose certain information about the workers they're letting go. But in Thursday's opinion letter, the

EEOC announced that noncitizens working abroad for American companies aren't required to be included in those disclosures.

The opinion letter, which the agency said can be used as a defense to liability, was approved by an EEOC vote Wednesday, it said.

"After careful consideration of the ADEA, the commission concludes that employers subject to the requirements of the ADEA are not required to include in OWBPA disclosures for employees working outside the United States who are not U.S. citizens because such individuals are not 'employees' for purposes of the ADEA," according to the letter, the agency's fourth since last April after going three decades without issuing one.

### **How the Pandemic Could Permanently Change Litigation for GCs**

Some court depositions and hearings might remain virtual once the coronavirus pandemic subsides, and general counsel will need to adjust their expectations and invest in technology if they want to prevail in the cases they face, according to a report released Wednesday by Crowell & Moring LLP.

The international law firm's ninth annual report, "Litigation Forecast 2021: What Corporate Counsel Need to Know for the Coming Year," looks at the ways the pandemic has changed litigation and the courts, from virtual juries to evolving types of cases, and aims to help general counsel and heads of litigation prepare for the effect of those changes on their litigation strategies.

Most hearings, depositions and trials went remote across the country when the pandemic hit the U.S. in March. Challenges arose, but there have been some positive outcomes, too, according to the report.

"We proved in the last nine months that we can do litigation — or at least large parts of litigation — remotely, and there are significant efficiencies to doing so for clients," Mark Klapow, co-chair of Crowell & Moring's litigation group and editor of the report, told Law360. "I think clients are going to change their expectations about how many of these functions are performed and the efficiency they expect with it."

### **PBS Lawyer Loses Job for Anti-Trump Rhetoric on Video**

It's not just in-house lawyers seen at violent protests for President Donald Trump who can lose their jobs. So can a pro-Biden in-house counsel who spoke of violence against the Trump White House.

Earlier this month, a Texas in-house lawyer was fired for his apparent involvement in the Capitol chaos. Now, The Associated Press has reported that Michael Beller, an in-house counsel for the Public Broadcasting Service, resigned on Jan. 12 after he was caught on a hidden camera describing Trump as "close to Hitler" and saying he would use Molotov cocktails at the White House.

Other news media on Wednesday were reporting that Beller had been fired, but PBS would not elaborate on the statement it sent Law360 and posted online.

"This employee no longer works for PBS. As a mid-level staff attorney, he did not speak on behalf of our organization, nor did he make any editorial decisions," PBS said in its statement. "There is no place for hateful rhetoric at PBS, and this individual's views in no way reflect our values or opinions. We strongly condemn violence and will continue to do what we have done for 50 years — use our national platform

and local presence to strengthen communities and bring people together."

### **Democratic Control Could Break Gridlock on US Privacy Measure**

Democratic Party control of the U.S. Senate raises the chances of federal data privacy legislation passing through Congress, but it's unclear whether lawmakers will tackle the issue as a top priority during President-elect Joe Biden's first term, attorneys say.

Leading congressional Democrats and Republicans have each proposed new rules in recent years that would require companies to overhaul how they handle personal information, with data breaches and privacy scandals at Facebook Inc., Equifax Inc. and Marriott International Inc. bringing data privacy into the national spotlight.

Pressure has also mounted on Congress to set a national standard for consumer privacy rights in the wake of California's enactment of its own state privacy law in 2020 and the European Union putting its General Data Protection Regulation on the books in 2018.

But so far, bipartisan discussions over a national privacy law have failed to reach a consensus on two key issues: whether the legislation should override state protections and whether private citizens or organizations should be able to sue for damages.

### **What to Expect From the EPA Under Biden**

The U.S. Environmental Protection Agency will have a pivotal role in helping President-elect Joe Biden carry out his pledge to address climate change with ambitious policies and reversing many of the deregulatory actions from the last four years.

For much of the Trump administration's tenure, EPA staff attorneys, scientists and policy specialists were tasked with putting their skills to use carrying out President Donald Trump's orders to deregulate as much as possible, including rolling back significant climate change policies put in place by the Obama administration.

A new political team is already taking shape to reverse course yet again, this time led by Michael Regan, the secretary of the North Carolina Department of Environmental Quality whom Biden said he'll nominate as EPA administrator. It will be a tall order to both move the agency forward in some areas and uproot current policies in others, but the staff is well-equipped to handle it, said Andrew Otis, a partner at Locke Lord LLP.

"As a general matter, the people who work there are top-notch and are an incredible resource," Otis, an EPA veteran himself, said. "And when all are motivated and rowing in the same direction, they can get an incredible amount done in a relatively short period of time."

### **BigLaw Ire Over Corporate Guidelines Colors DC Rule Plan**

A slow-burn battle between BigLaw and some of its most desirable clients has pulled into public view in recent weeks with planned ethics rule changes in the District of Columbia meant to rein in far-reaching corporate counsel engagements.

Firm leaders have long fumed quietly about nettlesome outside counsel "guidelines" — also known as

legally enforceable engagement contracts — that create broad conflict roadblocks or impose huge liability risks for lawyers, even absent a legal screw-up.

But with firm leaders loath to publicly challenge clients' aggressive use of OCGs, the changes proposed in September by the BigLaw-centric D.C. Bar raise the stakes of a tug-of-war over how much companies can demand, and what lawyers can ethically agree to in order to land the business.

The proposal, which has the backing of more than two dozen top-shelf partnerships, including Latham & Watkins LLP, Dechert LLP and Greenberg Traurig LLP, also puts a spotlight on companies' use of strict OCG terms to "capture" firms and prevent them from representing competitors.

### **Facebook Names First-Ever VP of Civil Rights**

Facebook on Jan. 11 said it has tapped a former White House and U.S. Department of Justice attorney to establish and oversee its new civil rights organization, acting on a recommendation made to the social media giant last year by an audit committee.

Roy Austin Jr., who most recently was a partner at Harris Wiltshire & Grannis LLP specializing in criminal defense and civil rights law, on Jan. 19 will step into the roles of vice president of civil rights and deputy general counsel based in Washington, D.C.

"I am excited to join Facebook at this moment when there is a national and global awakening happening around civil rights," Austin said in a statement. "Technology plays a role in nearly every part of our lives, and it's important that it be used to overcome the historic discrimination and hate which so many underrepresented groups have faced, rather than to exacerbate it."

He added, "I could not pass up the opportunity to join a company whose products are used by so many and which impacts the civil rights and liberties of billions of people, in order to help steer a better way forward."

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