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Jackson Lewis P.C. is Proud to Announce that

**JAMES P. CARTER**

has Joined the Firm's Orange County Office as a Principal

Mr. Carter has more than 25 years' experience counseling and defending companies in all aspects of employment law and regularly represents employers in matters including discrimination, harassment, wrongful termination, retaliation, wage and hour claims, class action cases, breach of contract claims, trade secret and non-compete, disability accommodation, leaves of absence and workers' compensation issues. Mr. Carter, who has been recognized in The Best Lawyers in America© since 2009 and was recently named the publication's 2015 Orange County Employment Law – Management "Lawyer of the Year," represents clients in a myriad of industries and is a frequent speaker on employment and workers' compensation issues.

Mr. Carter can be reached at James.Carter@jacksonlewis.com or (949) 885-1360



With 800 attorneys practicing in major locations throughout the U.S. and Puerto Rico, Jackson Lewis provides the resources to address every aspect of the employer/employee relationship.

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## A Smart Business Solution for ehs International Inc. Is Building Awareness

When it comes to effective business solutions, Marjorie Del Toro has a proven track record. As the CEO and founder of the environmental health and safety firm, ehs International Inc., Del Toro believes a smart first step is to open your doors. If clients are going to understand what your business has to offer, start by building awareness.



A perfect example of building awareness is the ehsInc event to mark the grand opening of a new Orange County Learning Center. By demonstrating a proven track record of safety consulting to the Irvine community, ehsInc expands their reach. The customized consulting and training services of ehsInc can help ensure your company's workforce goes home safely to their families.

In learning centers across the country like the new one in Irvine, ehsInc trains employees to do their jobs safely. If a specialty contractor needs to ensure OSHA guidelines are met, ehsInc supports the bidding process. From a consulting perspective, by showing companies how to properly manage their compliance records and safety training records, ehsInc saves businesses money while protecting lives. That's a great combination for ongoing success!

For more information, contact Chief Branding Officer Eric Garcia at info@ehsinc.org or 949.540.6800.

## National Labor Relations Act

by Jared Bryan, Principal, Jackson Lewis

Requiring class and collective action waivers as a condition of hire or continued employment violates the National Labor Relations Act ("NLRA"), the Ninth Circuit Court of Appeals ruled on August 22, 2016.

In April 2011, the U.S. Supreme Court ruled that class claims can be waived in a valid arbitration agreement under the Federal Arbitration Act ("FAA"). Many employers have since entered into such agreements with their employees. The National Labor Relations Board, however, takes the position that prohibitions against class or collective proceedings violate an employee's rights to engage in protected concerted activity for mutual aid and protection under Sections 7 and 8 of the NLRA.



Essentially following the Seventh Circuit's reasoning in a decision earlier this year, and deferring to the NLRB's interpretation of the NLRA, the Ninth Circuit has now held that employees have a substantive right to pursue work-related legal claims and to do so together. It also concluded that employers cannot defeat such rights by requiring employees, as a condition of employment, to agree to pursue claims on an individual basis. Other courts, however, including the Second, Fifth and Eighth Circuits, have concluded that class and collective action waivers do not violate the NLRA.

The future of class, collective, and representative action waivers is uncertain. Within the Ninth Circuit (which has jurisdiction over Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington), it remains to be seen whether the matter will be heard *en banc* by the full Ninth Circuit Court of Appeals. If the decision stands, the split on this issue is significant, and the matter is ripe for U.S. Supreme Court review. Many of the Supreme Court's decisions regarding class action waivers have been based on five-to-four rulings, where the late Justice Antonin Scalia represented one of the five votes favoring class waivers. Accordingly, the Supreme Court's composition likely will affect the fate of class action waivers and the outcome of the dispute among the circuits.

For more information on class and collective action waivers, contact Jared at Jared.Bryan@jacksonlewis.com or 949.885.1360.

### Jared Bryan

Jared Bryan is a Principal in the Orange County office of Jackson Lewis, an AmLaw 100 firm dedicated to representing management exclusively in workplace law.



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