

# Jo Ellen Whitney

## Shareholder



Shareholder

Des Moines

D +1 515 246 7993

M + 1 515 480 4557

joellen.whitney@dentons.com

## Overview

Jo Ellen is adept at managing the everyday chaos employers and human resource managers face. She is known for her approachable demeanor and practical approach to employment law. She shares her knowledge regularly - Jo is a prolific speaker and writer - simultaneously educating and entertaining audiences on the grey areas of employment law.

Her clients are employers, managers, physicians, hospital administrators, and HR professionals in the health, manufacturing, telecommunications, technology, agriculture, and finance industries as well as not-for-profit service organizations. She is described as “top notch” by clients she advises on a wide array of matters and issues relating to employment & labor law, health law, fair housing, privacy/data security compliance, and contract/policy issues relating to grant funding.

### Employment & Labor Law

Jo Ellen handles a variety of issues ranging from business planning and contracts to representation before administrative agencies such as the Iowa Civil Rights Commission, the EEOC, Iowa Workforce Development, OSHA, and the Department of Labor, as well as state and federal courts.

As a prior chair of Davis Brown's Human Resources Committee, Jo Ellen brings practical experience to her advice for employers on business planning, discipline, and termination issues. She has extensive experience with contract development, employee handbooks, and internal policies and practices for employment issues and regulatory compliance, including the ADA/ADAAA, FLSA, HIPAA and FMLA. Jo Ellen has developed sample policies for a number of professional groups and organizations including members of the Iowa Communications Alliance, Iowa Credit Unions, and the Iowa Health Care Association.

For employers who have Employment Practices Liability Insurance (EPLI), Jo Ellen serves as designated counsel on a variety of matters such as wrongful termination, retaliation, discrimination, harassment, wage hour, and civil rights.

### Health Law

Jo Ellen works extensively in the field of health care law, including privacy and confidentiality issues, such as HIPAA and GINA, for hospitals, clinics, and small practices. She has worked on medical staffing, credentialing and privileging matters, as well as consent and risk analysis. She also has practical experience implementing HIPAA in

her role as Dentons Davis Brown's privacy officer for data security compliance.

Jo Ellen also works with health care clients on matters including:

- Drug diversion and misuse of prescription drugs
- HIPAA/HiTECH, privacy, security and record release and retention
- E-data release, security, and retention
- Medical research - NIH, FDA and privately funded research - compliance and ethics
- Consent to medical care, procedures, issues
- Specialty records - HIV/AIDS, substance abuse, mental health, and genetics
- Licensure matters, including before the Iowa Board of Medicine
- Business planning and policies regarding staffing, discipline, and terminations

### Thought Leadership

**“Regarded as one of the area’s best employment practitioners for training matters ,”** - Reference Feedback, *Chambers USA*

Jo Ellen is a thought leader, frequently writing blogs and presenting regularly at employer training sessions, trade association conferences, and professional affiliation groups including NTCA (rural broadband providers) and national and local chapters of the Society for Human Resource Management (SHRM). She is also a contributor to professional and trade magazines, newsletters, and legal bulletins in the areas of employment law, privacy and health law, and serves as editor of the Iowa Employment Law Letter.

The author of multiple editions of the Iowa Guide to Medical Records, Jo Ellen also speaks frequently on HIPAA, medical records privacy, physician issues, and consent matters relating to the provision of medical care. She is a regular speaker for the Iowa Health Care Association, Iowa Health Information Management Association, Iowa Medical Society, Iowa Hospital Association, Iowa Podiatric Society, and other groups on topics relating to long term care, the provision of medical services, medical practitioners, and privacy.

### Personal

Jo Ellen and her family have won multiple Iowa State Fair blue ribbons for recipes including Plum BBQ Sauce and Parmesan Herb Crisps. An avid hockey fan, she also has season tickets for the Iowa Wild.

## Experience

- **COVID-19:** advises clients on pandemic-related issues such as travel, vaccinations, return to work, FFCRA, policies, OSHA, and general best practices
- **Wage Hour:** helps clients with wage hour claims, often on employee categorization, minimum wage, overtime questions, and compliance.
- **Discrimination:** helps hospitals and long-term care facilities on questions related to Section 1557 of the Affordable Care Act - prohibiting discrimination based on race, color, national origin, sex, age, or disability in certain health programs or activities. Recently, she has assisted several clients with questions about transgender employees and patients including issues of discrimination and medical services including writing policies and assessing benefit issues.
- **Family and Medical Leave Act (FMLA):** throughout her career, Jo Ellen has provided clients with advice, presented, and written articles about the Family and Medical Leave Act (FMLA), especially as it relates to adequate notice of an employee's FMLA rights and requesting FMLA data from an employee.
- **Social Media in the Workplace:** There has been a great deal of publicity about health care workers sharing

photos or videos of residents/patients on Snapchat, Facebook, and other social media. It's a complicated area for employers in all industries as multiple agencies, including CMS and the NLRB, have different and sometimes contradictory social media expectations. Privacy can be a hard concept to explain and enforce, Jo Ellen works to provide employers the policies and direct training necessary to adhere to these requirements.

- **Drug Diversion:** helps the health care industry navigate a complex area of drug diversion and misuse of prescription drugs. Consequences are serious and can result in termination as well as possible loss of insurance status, hospital privileges, IBM licensure, and DEA issues. For several years, Jo Ellen has worked with providers on compliance issues, providing proactive training and feedback to potentially help prevent drug diversion from happening in her clients' workplaces.

## Recognition

- *Chambers USA 2020:* Ranked in Labor and Employment Law, Iowa Band 2. Jo Ellen has been ranked for several years.
- AV<sup>®</sup> Preeminent<sup>™</sup> rated by Martindale-Hubbell The highest peer rating standard. This rating signifies that a large number of the lawyer's peers rank him or her at the highest level of professional excellence for their legal knowledge, communication skills, and ethical standards.
- *The Best Lawyers in America*<sup>®</sup> 2020: Ranked in Health Law and Employment Law. Jo Ellen has been ranked since 2012.
  - In 2013, she was named *Best Lawyers*<sup>®</sup> Health Care Law "Lawyer of the Year" in the Des Moines metro.
- *Great Plains Super Lawyers 2020:* Ranked in Employment and Labor law. Jo Ellen has been recognized by Super Lawyers since 2007. Jo Ellen is also listed in *Super Lawyers Business Edition*.

## Honors and Awards

- Governor's Volunteer Award recipient in 2007 and 1997 in recognition of her volunteer service to the Iowa Civil Rights Commission

## In the Media

- Quoted, "NLRB Changes Course, Sets New Standard on Profane Outbursts," *HR Daily Advisor*, July 2020
- Quoted, Is Training Time Paid? DOL Reiterates Standard Position, *HR Daily Advisor*
- Quoted, Welcome, 2021. Let's Talk..., *Lexology*, Jo Ellen Whitney Quoted
- Quoted, The DOL Revisits Compensable Travel Time, *BUILD DSM* magazine January issue

## Insights

Jo Ellen is a prolific author and often writes articles for HR professionals, owners, in-house counsel, healthcare providers, and more. In the last few months, she has written:

- Author, "COVID Changes to Iowa Law," Davis Brown Employment and Labor Law Blog, March 2021
- Author, "Not Normal Yet - COVID Spring Break 2021," Davis Brown Employment and Labor Law Blog, March 2021
- Author, "Discrimination Concerns in Skipping Notice Period," Davis Brown Employment and Labor Law Blog, March 2021
- Author, "Don't Let the Door Hit You on the Blank on the Way Out: Skipping the Notice Period," Davis Brown

Employment and Labor Law Blog, February 2021

- Author, “HR Quick Take: Religious Decorations in the Workplace,” Davis Brown Employment and Labor Law Blog, February 2021
- Author, “New Forms Required for Iowa Workforce Development,” Davis Brown Employment and Labor Law Blog, February 2021
- Author, “Coronavirus Protections Enacted by Two Executive Orders,” Davis Brown Employment and Labor Law Blog, February 2021
- Author, “HR Quick Take: Language Fluency as a Job Requirement,” Davis Brown Employment and Labor Law Blog, February 2021
- Author, “HR Quick Take: Severance Agreements,” Davis Brown Employment and Labor Law Blog, February 2021
- Author, “HR Quick Take: Reduced Hour Pay,” Davis Brown Employment and Labor Law Blog, February 2021
- Author, “HR Quick Take: FMLA Medical Certification,” Davis Brown Employment and Labor Law Blog, January 2021
- Author, “HR Quick Take: Minimum Wage Increasing,” Davis Brown Employment and Labor Law Blog, January 2021
- Author, “HR Quick Take: Borrowing PTO,” Davis Brown Employment and Labor Law Blog, January 2021
- Author, “HR Quick Take: Volunteer Mileage,” Davis Brown Employment and Labor Law Blog, January 2021

## Activities and Affiliations

- American Bar Association
- Employers Counsel Network
- Inne of Mediation
- Iowa State Bar Association
- Lincoln Inne
- Polk County Bar Association
- Polk County Women Attorneys

## Presentations

Jo Ellen is a frequent speaker and thought leader. In the last year she has presented:

- Panelist, “COVID Conversations: Healthcare Worker Vaccination and Employer Mandates,” Iowa Medical Society webinar, February 2021
- Co-presenter, Virtual Roundtable with Dr. Barbara Hodne of The Iowa Clinic and Ryan Brunner of Wellmark Blue Crosse Blue Shield, Holmes Murphy & Associates, January 2021
- Presenter, “Bonus Pay, Tests & Vaccines - Questions We Never Thought About Before COVID-19,” Iowa Health Care Association webinar, January 2021
- Guest, *HR Works* podcast, December 2020
- Panelist, “COVID-19 Case Law and Legal Issues (ADA Accommodation Issues),” Iowa State Bar Association

2020 Labor and Employment Law Seminar, December 2020

- Presenter, "Working in a Pandemic - Questions, Answers & Updates for Iowa Employers," Iowa Employment Conference, October 2020
- Presenter, "Work & School During COVID-19... Now What?," Holmes Murphy Work on the Street webinar series, October 2020
- Panelist, "Workplace Dynamics and Reentry," Holmes Murphy virtual roundtable, July 2020
- Presenter, "Risk Management - Volunteers Returning to Hospitals," Iowa Hospital Association webinar, June 2020
- Panelist, "Newsroom 515 Legal Matters Coronavirus," Business Record panel, March 2020

## Memberships

- Society for Human Resource Management

## Prior and Present Employment

- Dentons Davis Brown (formerly Davis Brown Law Firm)

# Areas of focus

## Practices

- Employment and Labor
- Disciplinary and Grievance Procedures
- Discrimination, Retaliation and Unlawful Harassment Litigation
- Employee Poaching/Raiding
- Employee/Independent Contractor Classification and Disputes
- Employment and Labor Advice and Counseling
- Employment Contracts, Handbooks and Policies
- Equal Employment, Diversity and Discrimination
- Global Employment and Labor Solutions
- Human Resources Advice and Counseling
- Internal Corporate Investigations
- International Employment Law
- IP/IT Protection and Litigation
- Labor Relations and Collective Labor Law Negotiation with Unions and Employee Representatives
- Occupational Safety and Health
- Restrictive Covenant Disputes
- Restructuring, Redundancies and Reductions in Force

- Training
- Wage and Hour/Working Time/Overtime Litigation
- Wrongful Termination and Unfair Dismissal
- Mergers and Acquisitions
- Privacy and Cybersecurity

## Industry sectors

- Insurance Litigation and Arbitration
- Communications
- Construction
- Financial Institutions
- Forest Products and Agribusiness
- Government
- Insurance
- Life Sciences and Health Care
- Health Care
- Manufacturing
- Technology

## Issues and opportunities

- Dentons Davis Brown

## Education

- Duke University School of Law, 1988, JD
- Duke University, 1984, BA

## Admissions and qualifications

- Iowa
- Sponsored by National Sheriff's Association, United States Supreme Court
- US District Court for the Northern District of Iowa
- US District Court for the Northern District of Iowa

## Languages

- English