



Yoni Levy

Kyle Higley

Yoni Levy: Welcome to *Scope of Practice*, a podcast that opens a window for an inside look into different practice groups and the lives of attorneys in those groups here at Ropes & Gray. I'm Yoni Levy, an associate in our asset management group, based in Boston. On this episode, I'm joined by Kyle Higley, who was recently promoted to partner in our employment, executive compensation & benefits group, and is also based in Boston. Hi, Kyle—welcome and congratulations!

Kyle Higley: Hi, Yoni—excited to do this.

Yoni Levy: Very excited to have you on. I've had the pleasure of speaking with a few of our colleagues before, and I have to admit, in practice areas that I'm a bit more familiar with than benefits. So, I'm excited to learn a bit more about your practice, alongside the listeners here. Maybe you could start by telling us a bit of background about yourself and your practice at Ropes & Gray, and how you wound up where you are.

Kyle Higley: When I went to law school, I had no idea what kind of law I wanted to practice. I kind of had a vague sense that I was better suited to transactional type work than litigation. In law school, I took a wide variety of courses, but I really liked the tax courses I took, and I gravitated more to that area. In order to help me get more expertise, my law school only offered I think two tax classes—I took them both—but I was interested in learning more, and

taxes are really complex subject matter. So, I did a tax LLM immediately following law school. I ended up at a smaller firm in Boston doing about 50% pure tax work—it was mostly bankruptcy-related tax—and 50%, they've called it the ERISA practice, which was employee benefits, a lot in the bankruptcy context, and then executive compensation and some employment law questions. At the time, I was really not that interested in that part of the practice. I viewed it as something I had to do temporarily in order to get a job at a firm I wanted to work at and to ultimately gravitate more toward tax. I ended up liking it—liking the “ERISA” side of the practice, and especially, the executive compensation work. I was there for two and a half years, and then I started looking for opportunities around town to really specialize in executive compensation and move away from tax.

That's when I joined Ropes, and I came in in the executive compensation practice. Our practice is broader than that—it encompasses executive compensation, which I think of as a mix of tax law and securities law, and then it also has a pure employment practice, like labor and employment, and a more traditional employee benefits practice, which deals mostly with ERISA. In the group, everyone touches on all three, but as you get more senior, you tend to gravitate toward one of those sub-fields. I've gravitated more toward the executive compensation area. What I personally like about it is that it has some of the technical aspects of tax law, which I liked, but it also has more of a practicality about it and it feels more concrete because you're dealing with employees, and people tend to be more invested in employees when you're talking about individuals than they are in pie-in-the-sky tax-law ideas.

Yoni Levy: Lots to unpack there. First, let me just say for people listening who might not know what ERISA is, it's the Employee Retirement Income Security Act of 1974, which is a federal law that sets standards for voluntarily established retirement and health plans in private industry to provide a layer of protection for those plans. There are rules that govern those plans that are quite complicated, and that's what “ERISA” lawyers are focused on. And my understanding, though please correct me if I'm wrong, Kyle, is that those rules are actually a subset of the tax code—is that right?

“We’re really looking to give our clients a sense of what the state of play is before the acquisition, as well as any material risks, any potential land mines down the road in terms of liability relating to our profits area.”

—Kyle Higley, Partner

Kyle Higley: There are two places. ERISA is separately codified, but there are a number of tax code-related provisions as well, so it’s a mix of both. ERISA was put into place in the early ’70s when people had more traditional pension plans under which, if you work for a company and you’re there for 30 years, then they will pay you some percentage of your salary for the rest of your life. As that has gone away and the industry has moved more toward 401(k)-type retirement plans, which are significantly less complex, it has become less important, so I think there’s probably a diminishing number of pure ERISA lawyers.

Yoni Levy: It’s interesting to hear, then, that the group is focused on a few practice areas in ERISA, while it sounds like some other firms focus a large part of their practice on ERISA, at least in name. The group at Ropes & Gray is diversified across a few subgroups, and I think you’re housed within the same department as tax—is that right?

Kyle Higley: Yes. We’re in the same broad department, and there’s a fair amount of overlap. The majority of the people in our group work on M&A transactions. So there’s a lot of coordination with our corporate teams and our tax teams, and even our subgroups within the group, to make sure we have all bases covered in these M&A transactions.

Yoni Levy: Say there’s an M&A transaction—what role are you playing, both substantively and procedurally? What kind of stuff are you substantively looking at, and where does your role fit into the overall transaction?

Kyle Higley: There are a few different aspects of it, and it depends in part on who our client is, where we as a firm do a lot of work for private equity funds that essentially just buy and sell businesses, and they’re involved at a high-level. We’re really looking to give our clients a sense of what the state of play is before the acquisition, as well as any material risks, any potential land mines down the road in terms of liability relating to our profits area. You can look for cost savings opportunities when you’re looking at how much those various programs cost, and those M&A advisors will have a sense of what the market is. It can be small cost-savings opportunities, like we offer our employees health insurance through Cigna, but if we switch to Blue Shield, we’ll save

\$10,000 a year. Or it can be more significant, where you’re thinking about consolidating offices, or instead of getting third-party insurers to cover your risk, you cover those risks yourself and take the risk that claims will be less than you would pay insurers. Then, in terms of the documentation, we’re usually involved in negotiating the purchase agreement. We’re part of the larger M&A team on that type of stuff when we look at a few provisions in the purchase agreements, mainly relating to what’s happening to compensation and benefits in the transaction, if anything. And we usually coordinate with the tax team to get those details right and work on the related documentation.

For other types of deals, there are different considerations, like, if our client is a company that has a business, and does something, then there’s also an additional layer about how you integrate those businesses together. There are all sorts of little details that fall under that work force integration umbrella. There’s a lot of stuff in there that’s not necessarily legal—it’s more just being at the table with the business people and trying to figure out what makes sense from a business perspective. We’re there because we have our eyes on the legal guardrails of where they’re not allowed to go, but usually, most things fall between those lines and it just becomes a question of, “What makes sense from a business perspective?”

Yoni Levy: We’re all subject matter experts to some degree. Maybe tax and the executive comp and benefits, probably more so than others, is very subject matter expertise heavy. How do you think that impacts the types of projects you just described happening? Who’s doing them, at what level of seniority? And how is that impacted by your understanding of the underlying rules that are governing what you can and can’t implement, and maybe also your knowledge of the market over time?

Kyle Higley: Starting with the last one, the knowledge of market is something that ends up being really helpful, especially when you work at a firm like Ropes & Gray where you’re doing a high volume of these transactions, so you really get a sense of what companies do. And not only what other companies in the industry do, but a lot of our clients are repeat clients, and you know what they have done in

past deals and where they've run into issues in past transactions, and you can avoid that in the future, so that becomes really valuable. There is a technical aspect to our practice which makes it a little bit more difficult to hit the ground running as a first-year associate—there's a steeper learning curve. I think, having done a little bit of both, the learning curve is more manageable in doing executive comp and benefits-type work than it is with pure tax work. Instead of dealing with the whole tax code, we're really dealing with a handful of sections that relate to employees, so we're more limited-scope in that way. Then there's a greater degree of practicality in our job. It's not totally rule-based—there's a rules component, but it's not totally rules-based, so that's where the market experience comes in. I think, for me, I felt, after I'd been doing it a few years, I had a pretty good sense of what I was doing. It wasn't totally nerve-wracking when I was asked to do something, and that has continued to develop. But the great thing about Ropes is that if a really tough question comes up, there's always someone in the group that I can bring in and talk it through with, and get real expertise from.

Yoni Levy: That's something that this series has really highlighted for me, I'll say, in talking to various colleagues over the course of this series, that we all rely quite heavily on the deep expertise within the firm, and on the concept that we all have different specific experiences. We can look to those with other experiences to help guide us when we're in a new area, so you're always learning, but you're never floating on your own, which I think is a huge draw to coming to a place like Ropes, to a big firm that has a deep bench, and quite a deep level of expertise in the areas in which we practice.

Kyle Higley: I think the scale of the transactions that we work on is so big, and you need so many advisors to really look at this stuff to do a good job, that it really is like a big team. Everyone's working toward the same goal, and it's very collaborative. And that's part of what I really like about doing this type of work, is being on a team and being collaborative with people.

Yoni Levy: I like the collaborative nature of working with other practice groups. Can you expound a little bit on the distinction between the subgroups within the group that we call executive compensation, employment & benefits? I think you touched a little bit on each, but maybe you could give us, still staying high-level, a little more color of what the difference is between executive compensation, labor and employment, and more classic ERISA work?

Kyle Higley: Benefits is more broad-based employee benefits, and that touches both the tax code and ERISA. There are a few components of that, but I think from our perspective, there are people at the group who work with ongoing clients on their 401(k) plan and how to design it, and their health benefits that they offer to their employees generally, and answer any questions on how to fill out their annual returns relating to their broad-based employee benefits. The industry has moved in a direction where a lot of that type of work is being done by brokers or advisors. And it's become standardized, where a Fidelity will have a 401(k) plan that they draft and they sell it to a bunch of different companies, and if any questions arise, you call Fidelity and not necessarily your lawyer. As benefits have gotten more standardized and more like that, there is not as big a component in terms of M&A transactions. We, as a group, will look at 401(k) plans, health plans and stuff like that in the scope of a transaction, but there don't tend to be as many issues there. So, that's benefits.

Employment is traditional employment law, and there are a couple different components to that. There are a few people who do employment-related litigation, mostly on the company side, where a company gets sued by an employee for discrimination. Or there's a part of that practice that helps with internal investigations, like if there were, for example, a sexual harassment allegation by an employee. Then oftentimes, the company will hire a law firm to help them investigate that incident, come to a conclusion, and potentially implement training or something to prevent that type of incident in the future. That's one component to it, and they coordinate a lot with the litigation group. The other component is the M&A component, and there, there's partially a litigation aspect in that, as part of our reviewing/doing due diligence on companies that our clients may be interested in acquiring, we're looking at employment-related litigation that may be in process or may have happened in the past, and assessing litigation risks relating to employment practices. The other part of it is they are reviewing whether people are classified as an employee or an independent contractor, whether someone's entitled to receive overtime, whether they're on salary, whether restrictive covenants like a non-compete are enforceable—things like that. There are usually special provisions in all the transaction documents that deal with that type of stuff. When our client is buying a company, they want to make sure that whomever they're buying it from can't just start an identical company and compete with them, or the

“We can look to those with other experiences to help guide us when we’re in a new area, so you’re always learning, but you’re never floating on your own.”

—Yoni Levy, Associate

management team won’t be able to just leave and start their own company, or even worse, work for the seller. There’s usually a component of locking up the management team, locking up the seller with non-competes to ensure that our clients are able to get the business running without having to worry about competing with the seller or something like that. So, that’s employment. They’re also driving employment agreements with numbers of management, and usually, after a transaction, there is a role with the companies when they have employment-related questions. If they’re looking at redoing their policies, if any issues came up during diligence, we’ll work with them to get that sorted out and try and mitigate risks that have been identified so that they don’t come to fruition.

Executive comp is more what I do, and there are a couple components to that. There’s the transactional component, which I touched on earlier, and a lot of that is dealing with really the top-level of employees—the leadership team. The considerations for the leadership team are a little bit different than for everyone else.

Yoni Levy: It sounds like it’s really an interesting mix of commercial considerations, layered on top of a regulatory framework. I bet there are a fair amount of commercial discussions, but also a decent amount of legal research or statutory research—is that right?

Kyle Higley: Yes, that’s right. Especially when you’re more junior in the group, there is a fair amount of research, and it’s a really good way to learn the legal framework. Then, as you get more senior and you get more of a handle on that, there is more of a commercial aspect to it. Along the way, there’s a good amount of coordination with other advisors, both the client and other advisors, where usually there are legal advisors. And then there are people looking at things from an accounting standpoint. Most public companies, at least, have compensation consultants that are aggregating public information and presenting a view of what other companies in the market are doing. And all of that feeds in together to what companies decide to do, and it ends up being very collaborative.

Yoni Levy: Do you work directly with the consultants?

Kyle Higley: Sometimes—we work on a lot of IPOs, and we tend to coordinate pretty closely with the consultants on some of what’s happening with equity in an IPO, more because as much work as we do, they do, too. So, they have a lot of experience as to what other people are doing. And then, they also are specifically looking for market data and trying to get a sense of what’s going on in the market and what’s going on with companies in the same industry as our company, and the same size—stuff like that. They really have a lot of insight that we like to get the benefit of.

Yoni Levy: What excites you about your practice area?

Kyle Higley: There’s a big problem-solving component that I really like. I feel like people tend to be more interested in it because a lot of the people we end up talking to, it directly involves them, or directly affects them with how they’re being compensated—things like that. We have more, I think, client contact than some of the other specialist groups, which I also think is really great, and I also think it’s a little bit more digestible. Our subject matter’s a little more digestible to clients than tax, for example, or some of the other specialty groups, so I think it makes those interactions a little bit more rewarding.

Yoni Levy: What did you like more about benefits than about tax?

Kyle Higley: It felt more manageable. It felt like with tax, there’s that thing, “You don’t know what you don’t know.” And I felt like with tax, I just never was confident because there were 7,000 sections of the tax code, and I didn’t know if there was something out there that would contradict what I was thinking, or things like that. So, it feels more manageable, in the sense that with most of the questions I get, I know exactly where to look if it’s a legal question. I wouldn’t have a job if it was as easy as, “the answer’s right there,” but at least I know where to look, and it might be a gray area, but I think it’s easier to get a handle on what the issues are, at least. It felt like there was more of a human component to it than tax law. With tax law, it just felt like no

one ever knew what I was talking about. I probably didn't know what I was talking about, and certainly, no one I was talking to knew what I was talking about—it just felt kind of isolating that way.

Yoni Levy: That makes sense to me. It's that same puzzle-solving as tax, but in a less esoteric way. So, you're able to communicate more concrete, rather than saying, "You can't form the entity in this jurisdiction because if you invest in a pass-through and XYZ, then it might result in this withholding tax that you don't understand." You can say more concretely, "You're not allowed to not offer XYZ health benefit." And it requires understanding the rules, but the outcome is more concrete, and feels more tangible to the people you're explaining it to.

Kyle Higley: Yes, exactly. Not to bash tax. I think tax is very interesting, and I just think the learning curve is really steep. It's steep in this area, too, because it's very technical and rules-based, but I think tax is a little bit steeper.

Yoni Levy: Can you talk to us a little bit about what mentorship is like within the benefits group at Ropes, and the relationships between associates and partners, and among associates in the group?

Kyle Higley: I think it's really great. I've been here six or so years now, and I've had really amazing mentors who are always available, are really supportive in helping you understand what's going on and growing your career. I think that's true across the group. It is, at least for the people I work with, but people tend to be really hands-on. When I came to Ropes, I was surprised at how available everyone was and how evolved everyone was. I think it's a really good thing, especially for junior lawyers, to have someone that's really involved, because it takes a lot of the pressure off when you have someone who knows what they're doing who is looking at things and is available to answer questions, and is not just leaving it to the associate to figure things out and potentially make mistakes. It's also really good for the client, because I get the sense that at a lot of firms, there isn't the level of supervision that there is at Ropes. I don't know if you feel that way about your practice group, but my sense is that that's pretty true across the groups.

Yoni Levy: I think I do feel that way. I'm torn, because at the same time, I also somehow feel like Ropes gives larger amounts of responsibility to associates in a way that I've seen, at least compared to my peer firms that I see in the market. I don't see quite as many associates leading calls,

talking on calls, or handling the negotiation. So, I certainly agree in that I've never felt like I was left adrift, both because I have the partner who's assigned, whose project I'm working on, who it's their client and I'm working with them on it, but also because my group, at least, seems to treat everyone like they're a client of the firm, not a client of any particular person. I've always had an easy time finding other partners, even if someone's not available, to just say, "I have a general question about XYZ. Could you give me your thoughts?" And so, I want to wholeheartedly agree because I do agree, but in my head, I'm struggling with the tension between that and the concept that I've noticed that I get on calls as a fifth-year and I'm leading the negotiation, and there's a partner on the other side, and an associate who just sits there quietly and says nothing. I think that we definitely have the support within the group, but we somehow at the same time, have a level of trust in associates where the hierarchy is not super rigid, and it's not like only the partner gets to do the important things. You have the support you need, but you still get the responsibility—at least, that's what I've found in the funds space.

Kyle Higley: I think that's a really great point, because I feel the same way, too, that there's definitely that responsibility. I think our second-year associates are leading calls. I remember leading calls when I was a second year and the partner would put on mute and say, "You should make sure to ask about this..." or something like that, but they were there in a support role. But definitely you're leading things, you're taking responsibility for things, you're responsible for knowing what you're talking about, so it's a good balance.

Yoni Levy: For sure—I totally agree. Talk to me a little bit more about your personal time. What do you like to do for fun in your spare time?

Kyle Higley: I really like music. I like exercising. I like to travel. The occasional TV show. I like sports. I have a lot of interests. And it's good that the world is opening up a little bit more after the last year, which I think has been rough on a lot of people. I think it took me a while personally, especially when I started working, to figure out how to balance things, but I feel like that gets easier as you go along, and are more used to the cadence of things and the flow of how working in a law firm works.

Yoni Levy: Yes, absolutely. I think that's a point that I have tried in my personal, informal mentorship with more junior associates, to convey to them, that a large part of the burden of the job is the burden you put on yourself because you

“Everyone’s working toward the same goal, and it’s very collaborative. And that’s part of what I really like about doing this type of work, is being on a team and being collaborative with people.”

—Kyle Higley, Partner

don’t understand, rightly or wrongly, but because you don’t yet understand the flow of work. The more senior you get, to some degree, you have some more control, but it’s mostly that you have more visibility and understanding of what is going to be urgent versus what is not, and because of that, you’re able to prioritize better. I see it as part of my role as a senior associate to make sure that the people I’m working with understand the priorities and the timelines, but it takes time to develop that skill, to be able to identify that on your own, both as a skill and familiarity with the practice area. So, I think that’s a good point, that that takes time to develop.

Kyle Higley: I think that’s totally right. I think people generally do a good job of communicating that type of stuff. From what I hear, at least not emailing you on a Saturday night and asking you to do something if it doesn’t need to be done on a Saturday night, or if they do email you, they’ll be clear about when they’re asking for comments. I think that’s been a focus for me as I have learned how to manage junior employees is to do that, and I think it’s good. I think people generally do a good job with that kind of stuff—communicating deadlines and things like that—but it is something that takes a while to get the hang of, both because judging when you would think that things need to be done, and then also, judging how long it will take you to do things.

Yoni Levy: Yes, absolutely. I think what you’re looking for—I won’t put words in your mouth—but it’s maybe being conscious and conscientious of the impact that the things you send have on

other people, and I think that’s true in a broad sense. I think part of the collegiality here is that as you grow into your role, one of the things that’s stressed to you is to keep in mind the impact of the things you say and how they affect other people, regardless of how you intended them. That can be both in terms of expressing clearly the timeline because someone’s a first-year associate, and if you ask them to do something, they’re not going to understand that it doesn’t mean you have to do it right away, so being clear about it. Also, I think we’re all growing and learning, and making sure that when you’re conveying feedback, you are conveying feedback in the first place, which I think is helpful for people to grow—and that you’re conveying it always in a manner that helps people grow, and acknowledges how someone will receive the feedback that you’re giving them.

Kyle Higley: Yes, for sure—that’s exactly right.

Yoni Levy: Kyle, thank you so much for joining me and sharing your insights into the benefits group. And thank you to our listeners. We hope you found this to be helpful. If there’s a specific practice group or area you’d like us to cover in a future episode, please reach out to me directly—I’d love to hear from you. If you’re a law student or recent graduate who would like to learn more, please visit our website at ropesgrayrecruiting.com or check us out on Instagram at [@ropesgray](https://www.instagram.com/ropesgray). You can subscribe to this series wherever you typically listen to podcasts, including on [Apple](#), [Google](#) and [Spotify](#). Please look out for future episodes and share with your friends. Thanks again for listening.

ROPES & GRAY

ropesgrayrecruiting.com

BOSTON | CHICAGO | HONG KONG | LONDON | LOS ANGELES
NEW YORK | SAN FRANCISCO | SEOUL | SHANGHAI
SILICON VALLEY | TOKYO | WASHINGTON, D.C.