

Employment Litigation and Counseling

Overview

As the issues facing workforces continue to evolve and become more difficult to navigate, even the most sophisticated of employers are under pressure to develop new approaches both to prevent employment disputes and, when they arise, to resolve them in the most effective manner.

Katten's Employment Litigation and Counseling group is on the forefront of developing strategies that fit both of these objectives, advising clients on procedures and strategies to minimize legal exposure while vigorously defending them against claims whether brought in court, in arbitration or before an administrative agency.

Integrated strategies for prevention and defense

Our attorneys practice a hybrid of employment law counseling and litigation that covers all issues employers might encounter, from single-plaintiff wage and hour or discrimination and harassment claims to nationwide class actions. We combine a total command of the constantly changing federal and state employment laws with a deep understanding of our clients' business operations. We partner with our clients to design and implement compliance strategies that minimize the risk of liability from employee claims. We use our knowledge of our clients' operations to tailor a strategy that will work for them, understanding that not every potential solution works for every employer and that the more nuanced the approach, the higher the likelihood of success.

High-risk litigation experience

When, despite these efforts, litigation proves inevitable, we have the knowledge and experience to litigate high-stakes matters to conclusion, constantly evaluating and steering toward the most advantageous outcome for the lawsuit at hand. From massive class actions to single-plaintiff claims, our attorneys defend employers in the lawsuits that mean the most to them and have the greatest potential impact on their business.

Critical investigations

We are often engaged to conduct independent, third-party investigations of sexual harassment, embezzlement, fraud, theft and other employee misconduct. We work closely with human resources departments — reporting to boards, C-suite executives or executive committees — to assess what occurred and reduce litigation exposure. These investigations have become increasingly important in light of the #MeToo movement and the highly charged legal and public scrutiny to which employers are now increasingly subject.

Our Experience

- Represent Midwest manufacturing company in age and disability discrimination suit in federal court. Plaintiff, formerly employed as company's national sales engineer, claimed he had been discharged because he was 57 years old and had childhood polio. Court granted motion for summary judgment, ruling that plaintiff failed to prove he was disabled under Americans with Disabilities Act, and could not establish a *prima facie* case under Age Discrimination in Employment Act.
- Represented nonprofit facility that cares for developmentally disabled children and adults, and on behalf of two of its managers, against allegations that the defendants had discriminated against plaintiff based on race and actual or perceived disability, retaliated against her for opposing discrimination, and violated Family and Medical Leave Act by not permitting her to take intermittent leave for medical condition. Obtained summary judgment in favor of client.
- Defended boutique trading firm against allegations by former general counsel that firm breached oral agreement by failing to deliver sizable year-end bonus and stock options, and that it fraudulently induced him to accept employment by misrepresenting its financial condition and business plan. Persuaded federal judge to dismiss all claims. The judge accepted our arguments in full that firm's alleged statements did not constitute enforceable agreement, that it did not have requisite intent to defraud plaintiff, and that plaintiff waived his claim by remaining employed with firm for several months after alleged fraud had occurred.
- Represented major Chicago-area hospital and two senior administrators in \$6 million suit filed by pathologist claiming retaliatory discharge, breach of contract, defamation, and violations of ERISA and Illinois Wage Payment and Collection Act. Court granted summary judgment on all counts, ruling that hospital did not breach its by-laws by terminating pathologist's services before ending his medical staff privileges. Court also rejected physician's retaliatory discharge and defamation claims, broadly applying immunity provisions of Illinois Hospital Licensing Act and Illinois Medical Studies Act. Decision strengthens ability of health care providers to make medical staffing decisions that cannot later be second-guessed by judge or jury.
- Defense of major Chicago hospital against disparate impact pregnancy discrimination suit brought by EEOC on behalf of all pregnant applicants and first-year employees who had been rejected or terminated by hospital over span of more than 10 years. Obtained highly favorable settlement through aggressive defense that involved small payment to only one former employee.
- Represented television industry client in federal age discrimination case brought by senior high-level executive. Obtained summary judgment as affirmed by US Court of Appeals for the Seventh Circuit, accepting our position that comments plaintiff's manager made where he adversely referred to aging employees shortly before terminating plaintiff were irrelevant.
- Represented major manufacturer in precedent-setting case addressing employer's liability for sexual harassment by supervisors. We initially obtained summary judgment from federal district court in Chicago, which dismissed not only sexual harassment claim but also plaintiff's additional claims of retaliation under Title VII and intentional infliction of emotional distress under state law. The plaintiff's appeal was consolidated with another sexual harassment case and heard *en banc* by Seventh Circuit to resolve the standards governing company liability for a

supervisor's sexual harassment. Secured very favorable settlement for client, while companion case proceeded to Supreme Court.

- Successful representation in a case in which client had terminated employee who sought to return to work after indefinite absence that had lasted nearly five months, raising difficult issues about extent of an employer's duty of reasonable accommodation. Secured complete victory for client without need for trial.
- Represented Atlanta-based client that refers physicians for temporary fill-in positions ("*locum tenens* coverage") or for permanent positions with health care facilities, clinics and medical practice groups in initial determination by state of New York that it was the employer of such physicians and thus liable for unemployment insurance contributions. We appealed that determination, which could have required client to also cover physicians for unemployment insurance, workers compensation and disability insurance coverage in several states. Persuaded New York Department of Labor to reverse its initial determination to find that the physicians were independent contractors, not employees, relieving client from any responsibility for making contributions for such coverages.
- Represented technology company in audit where it was discovered several job groups were misclassified as exempt under the Fair Labor Standards Act. Working with company's general counsel and human resource officer, we helped client restructure its compensation system for these employees to achieve compliance with the law and avoid costly litigation and potential liability.
- Represented Chicago-based money management holding company in action brought against former principal of subsidiary firm who resigned and started a competing business, soliciting clients and employees of her former firm and improperly utilizing its confidential and proprietary information. We stopped the former principal's improper conduct and unfair competition without need for extended litigation.
- Represent company that operates national chain of senior assisted living facilities in its dealings with union that represented employees at a specific facility. After lengthy negotiations with union, parties signed a collective bargaining agreement. Shortly before that agreement expired, employees' dissatisfaction with agreement and union culminated in petition to decertify union. With our guidance, the decertification petition resulted in an election at National Labor Relations Board where employees overwhelmingly rejected continued representation by union.
- Represented distributor of alcoholic beverages that abruptly terminated operations and laid off all of its employees when its primary supplier terminated its agreement with client. Union representing employees claimed that client had violated WARN Act, the federal statute requiring 60 days advance notice of a plant closing. After a two-day hearing, arbitrator concluded that client had demonstrated that it fell within unforeseeable business circumstances exception under WARN Act and dismissed union's claim.
- Successful defense of \$4 million class action brought by 350 former employees who alleged violations of federal plant closing law (WARN Act) and state wage payment law. Obtained summary judgment after persuading plaintiffs to drop their state law claims and defeating their repeated efforts to expand the class. Despite employer's failure to provide any advance notice of its plant closing, prevailed by showing that its decision to close plant was due to unforeseeable business circumstances.
- Represent client in connection with sexual harassment claims brought by employee who claimed her supervisor's repeated harassment had forced her to resign. Persuaded court that application of recent Supreme Court

decisions warranted summary judgment because alleged harasser did not take tangible job action against employee, because employee failed to report activity immediately, and because employer took prompt remedial action once it became aware of alleged problem.

- Defense of class action where client faced millions of dollars in potential exposure for unpaid overtime, penalties and plaintiffs' attorneys' fees. Through focused, aggressive defense, forced plaintiffs to settle for less than two percent of damages they had sought and take nothing for legal fees.
- Represented mid-sized manufacturing company connected with series of reductions in force that resulted in dozens of employees being terminated. Our guidance and counseling enabled client to avoid a single claim being filed.
- Represented former employee in successfully bringing arbitration against former employer for breach of contract for failure to pay bonus mandated in employee's contract.
- Represented former employee in successfully bringing arbitration against former employer for breach of contract for failure to pay contractually mandated separation payments and vesting of equity awards.

Key Contacts



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Recognitions

Recognized or listed in the following:

- *Best Law Firms*
 - Employment Law – Management
 - Charlotte, 2022–2024
 - Labor Law – Management
 - Los Angeles, 2022–2024
- *BTI Litigation Outlook*

- Complex Employment Litigation Honor Roll, 2018
- *The Legal 500 United Kingdom*
 - Human Resources
 - Employment: Employers, 2017
- *The Legal 500 United States*
 - General Commercial Disputes, 2019–2023
 - Workplace and Employment Counseling, 2019