

Labor & Employment

Labor and employment is a constantly changing practice area governed by a profusion of interrelated federal, state, and local laws and regulations. Cozen O'Connor has a dedicated team of labor and employment lawyers who focus on keeping clients informed and protected.

Our full-service labor and employment department represents a broad range of entities: exchange-listed companies, private enterprises, nonprofits, governments and trade associations. We handle high-stakes employment litigation, including individual and class claims of discrimination, harassment, wage and hour violations, defamation, non-compete violations, and wrongful discharge. We appear regularly before federal and state courts, agencies and departments (such as the EEOC, NLRB, DOL, IRS, OSHA, and ICE), and arbitrators. We also handle traditional labor law matters, helping employers foster positive workplace relations, negotiate collective bargaining agreements, and handle labor arbitrations and unfair labor practice proceedings.

When a specific labor or employment issue arises, clients immediately face the competing goals of vigorously refuting accusations or adverse precedents, and restoring a sense of calm and unity of purpose to the workplace. Cozen O'Connor attorneys guide clients through these complex situations and enable them to take decisive action without compromising operational effectiveness. We are keenly aware that the legal response must operate in harmony with the business goals.

One of our greatest assets in this endeavor is the depth of our trial and courtroom experience. We have dozens of lead attorneys who routinely appear in court, agency and arbitration proceedings, giving us tremendous insight into how a case is likely to play out in a litigation setting. That hard-earned knowledge serves our clients well as we partner with them to decide upon a strategic approach.

SERVICES

Employment Litigation

- Investigate employee claims or government inquiries
- Defend clients against individual or class (collective) action lawsuits
- Represent employers in suits alleging discrimination and harassment on the basis of age, race, religion, national origin, gender, sexual orientation, disability, and other areas protected under federal, state and local law
- Represent employers in cases involving defamation, invasion of privacy, trade secrets and noncompetition agreements, duty-of-loyalty claims, equal-pay disputes, employment benefits disputes, pension and benefit plan fiduciary liability, wage-and-hour claims, whistle-blowers, and wrongful-discharge claims
- Advocate for clients in trade secrets and restrictive covenant cases

Employer Advising, Training and Investigations

- Assist in the resolution of individual workplace problems
- Create effective employee benefits and executive compensation programs
- Advise in-house counsel, human resources professionals, and executives in the development of sound personnel policies that limit liability and enhance productivity
- Train staff to ensure fair and consistent enforcement of personnel policies
- Perform workplace audits and internal investigations
- Review and draft employment policies and manuals, as well as employment and termination/severance agreements



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Labor Relations & Disputes

- Help managers build cooperative relationships with their workforce, unionized or not
- Advise clients on NLRB regulations and represent employers in inquiries and hearings
- Evaluate and implement alternative labor-management relationships
- Negotiate collective bargaining agreements and handle arbitration proceedings
- Respond to strike threats, work stoppages and mass picketing
- Defend employers against charges of unfair labor practices, including those alleging unlawful termination, failure to bargain in good faith, and interference with employee rights

CLIENTS

Our clients operate in diverse industries, including:

- Chemical
- Education
- Energy and utilities
- Financial services
- Government
- Health care
- Hospitality
- Retail
- Technology
- Transportation and logistics

TEAM

Our labor and employment department is made up of outstanding practitioners with years of experience. Our attorneys have been commended by independent legal observers for their “outstanding client service” and identified as some of the “most prominent employment defense attorneys” in the country. The team includes fellows of the College of Labor and Employment Lawyers and fellows of the American College of Trial Lawyers. Members of our team are regularly recognized by leading publications such as *Chambers USA*, *Best Lawyers*, *Super Lawyers*, and others. Most recently, two senior members of the department were recognized among “The Nation’s Top 100 Most Powerful Employment Attorneys” by *Human Resource Executive* magazine.

As many large law firms trim their labor and employment practices and once-small boutiques expand into national litigation factories, Cozen O’Connor is steadfast in its conviction that the most sophisticated labor and employment matters are best served by practitioners operating within a full-service firm. Our labor and employment attorneys work closely with their colleagues in corporate, tax, M&A, real estate, and antitrust law to see all sides of an issue and provide comprehensive analyses. In addition, Cozen O’Connor attorneys do not churn out canned solutions to generic problems. Our clients demand tailored, timely advice that is informed by a genuine understanding of their business – and that’s what we provide.

Experience

Employment Litigation

- We successfully defeated two motions for class certification in a putative nationwide Rule 23 class action centering on alleged gender discrimination, brought against a Fortune 100 company. The lead plaintiff, a former female executive, twice sought to certify a class of more than 1,700 female managerial employees, alleging a pattern or practice of discrimination in pay and promotions. The litigation team successfully defeated class certification, demonstrating through unimpeachable

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Related Practice Areas

- Class Actions
- EB-5 Immigrant Investor Program Services and Compliance
- Employee Benefits & Executive Compensation
- Employment Litigation
- Immigration Policy & Strategy
- Labor Relations & Disputes
- Nonprofit & Tax-Exempt Organizations
- Railway Labor Act
- Trade Secrets, Restrictive Covenants, and Computer Abuse

Industry Sectors

- Cannabis
- Food & Beverage
- Gaming
- Health Care & Life Sciences
- Higher Education
- Insurance
- Media & Entertainment
- Real Estate & Construction
- Retail
- Sports
- Venture Capital

expert analyses that the plaintiff could not meet her burden of showing commonality and typicality. When the Lilly Ledbetter Act significantly modified the analysis for Equal Pay Act claims, the litigation team defeated a second attempt at class certification. The district court's rulings were subsequently affirmed on appeal to the Seventh Circuit. We then defended the company in connection with 24 individual lawsuits filed by putative class members and resolved them on favorable terms.

- After a three-week bench trial in federal court, we obtained a complete victory for our client, a major chemical manufacturer, in a retaliation case brought by a former employee. This victory was the capstone of more than 15 years of litigation involving multiple lawsuits filed by the former employee. The lawsuit that was tried centered on whether certain litigation decisions in an underlying case were retaliatory, and also presented complicated legal issues that had a dramatic effect on the damages which could be sought at trial. The Cozen O'Connor team filed a number of pre-trial motions on these issues seeking to limit damages, and won all of them, with the net results of removing \$69 million of the claimed \$70.5 million in damages and significantly limiting the scope of the trial. This victory was affirmed on appeal to the U.S. Court of Appeals for the Third Circuit.
- We successfully enforced a covenant not to compete against an employee located in Oregon on behalf of a Chicago-based employer. In this case, the employee sought not only to try the case in federal court in Oregon, but also to have employee-friendly Oregon law apply to the contract. We filed a motion for a change of venue in which we successfully argued that Illinois was the only proper venue and that Illinois law was the appropriate substantive law to govern the contract. After receiving this favorable ruling we secured a quick settlement that included the employee's continued adherence to the contract.
- We secured a favorable settlement on behalf of a large client facing millions of dollars in alleged damages in a suit brought for personal injury and under the New Jersey Law Against Discrimination. At the outset of the case, the plaintiff refused to discuss settlement unless the client's initial offer was at least seven figures. When settlement discussions failed, we used social media research and computer forensics to show that the plaintiff's claim of injury was greatly exaggerated, that he otherwise was lacking in credibility, and that he had spoliated evidence. Based on this investigation and facing spoliation sanctions, the plaintiff settled for a sum far less than he originally sought.
- We won a \$7 million jury award under the Pennsylvania Uniform Trade Secrets Act (PUTSA) after a three-week trial. During the course of that trial, we also proved that the other side engaged in extensive spoliation, warranting a permissive-inference jury instruction at trial. At the time of the verdict, this \$7 million jury award was the largest award on record for a PUTSA claim.
- We obtained a defense verdict in a case in which the plaintiff, a receptionist at the defendant-hospital, alleged she was subjected to sexual harassment at the hands of her supervisor, purportedly culminating in an assault in a control room near the reception area. Plaintiff sued both the hospital and the supervisor, and the case went to hearing before an ALJ in the Chicago Commission on Human Relations, a notoriously employee-friendly forum. We obtained security camera footage of the reception area in the time after the alleged assault, which showed that Plaintiff calmly left the control room, greeted a number of incoming visitors, and even leafed through a gossip magazine in the time that followed the alleged assault. This impeachment evidence, combined with a surgical cross examination, resulted in a complete defense verdict.

Wage and Hour Litigation

- We achieved early resolution of an FLSA collective action, brought against a Florida-based delivery and distribution services company, in which a group of delivery drivers alleged that they were improperly classified as independent contractors and should have been paid overtime. During the

discovery phase of the case, we were able to establish a number of facts that raised serious questions as to whether a collective claim was appropriate for this group of drivers. We leveraged these facts to negotiate a favorable settlement for the client at the close of discovery.

- We represented one of the nation's largest agriprocessing companies in connection with more than 25 large FLSA donning and doffing class actions brought against, including a nationwide case brought by the United States Department of Labor. After winning a number of important pre-trial rulings, we ultimately negotiated a global settlement agreement with the DOL on very favorable terms.
- We represented a leading energy provider in an FLSA collective action, and Rule 23 class action, involving a putative class of 2,600 workers seeking pay for on-call time and meal periods where they allegedly were not relieved from work. Although the potential damages in that case exceeded \$500 million, we obtained a hard-fought summary judgment on all claims.
- We successfully defended a large fast food chain against a nationwide class action alleging that assistant managers in its restaurants were misclassified as exempt. We persuaded the Court that the plaintiff could not pursue his claim as a collective action because the job duties of other assistant managers were not the same as the job duties that the plaintiff claimed he performed.
- We successfully dispensed with a wage and hour collective action brought against a fast food franchisee in which the plaintiff alleged, on behalf of himself and all other assistant managers at the franchisee's 116 restaurants, that assistant managers were misclassified as exempt from overtime requirements. After compelling individual arbitration based on an arbitration agreement with a class action waiver, the matter was resolved individually.
- We secured a favorable settlement for a group of defense contractors facing an FLSA collective action, centering on allegedly improper lunch deductions, by first securing dismissal of a parallel state court action under the first-filed doctrine. We then further limited the client's potential exposure by using a novel constitutional argument to obtain dismissal of a state wage and hour claim from the surviving federal action.
- After being retained in the wake of a seven-figure sanction by the state's Labor Commissioner for unpaid overtime, we negotiated a substantial reduction in the total amount our client had to pay. Further, we designed a new compensation plan to conform to the client's business model and secured approval of the plan from state regulators.
- We achieved summary judgment for a major municipality facing more than \$2.8 million in potential liability in an FLSA collective action brought by more than 200 prison guards seeking overtime compensation for time spent changing into and out of their uniforms. We convinced the court that the exclusion for clothes changing time provided by Section 203(o) of the FLSA applied where the officers had historically not been paid for clothes changing time, and every collective bargaining agreement between the municipality and the representative union was silent on the issue. This decision was affirmed by the U.S. Court of Appeals for the Third Circuit.
- We represented a major telecommunications and cable television provider in a class action lawsuit brought by the U.S. Department of Labor alleging that more than 300 cable installers were improperly classified as independent contractors. After targeted and aggressive discovery during which the court took the rare step of granting our motion to depose the Department of Labor investigators who had handled the investigation, we obtained summary judgment. This win was later upheld by the Fourth Circuit Court of Appeals.
- Obtained dismissal of a class action brought by the Secretary of Labor, alleging that our client, a

major telecommunications and cable television provider, had improperly treated over 300 workers as independent contractors.

- Prevented certification of a nationwide class action brought against a national trucking company, thus severely restricting the scope of the case and potential exposure to the client.
- Negotiated a very favorable settlement on behalf of a group of defense contractors facing state and federal collective and class actions over allegedly improper lunch deductions.

Labor Relations & Disputes

- We secured victory in a high-stakes and closely watched appeal before the NLRB centering on efforts by the football team at Northwestern University to form the first union of scholarship student athletes. Our team ultimately persuaded a staunchly pro-labor Board to decline jurisdiction in a unanimous decision and side step the controversial question of whether student-athletes were employees under the NLRA. In reaching this successful result, we marshaled the support of nearly one dozen amici, including the NCAA, the Ivy League schools, several major conferences, private universities, and even members of Congress to submit briefs to the Board. The case was covered by every major media outlet, and the unprecedented issue spawned Congressional hearings and nationwide interest.
- We secured an injunction against union picketers who impeded ingress and egress at a hospital construction site to protest our client's employment of non-union construction workers. The injunction, which prohibited representatives from multiple unions from participating in the protest within 25 feet of the site, was issued under an exception to Pennsylvania state law generally precluding injunctive relief during labor disputes.

Employer Advising, Training and Investigations

- We conducted a comprehensive labor and employment compliance audit for a restaurant chain. The audit entailed analyzing the company's policies, its electronic timekeeping and pay systems, and interviewing dozens of managers and employees (including those in California and New York) regarding, among other things, the recording of work time, overtime, meal breaks, training time, sick pay, vacation leave, and child labor regulations. Based on our research and analysis, we created new individualized scheduling and timekeeping guidelines for each state, drafted written policies, and prepared employee training presentations to enhance the company's ability to adhere to both state and federal wage and hour requirements.
- We audited the wage and hour practices for a world-wide Fortune 100 client with U.S. employees in the service, mining, financial, agricultural, and food and feed manufacturing and distribution industries, including thousands of California employees. We then assisted the client in converting to a more modern timekeeping system. We worked efficiently with the client's Law Department and Human Resources leaders to devise the workflow modifications required for the new system, assisted in developing communication pieces to announce the change, and helped the client design methods to monitor compliance.
- We have worked with clients to develop alternative dispute resolution ("ADR") programs for the workplace, including the design and implementation of a universal arbitration agreement and class action waiver for two major retailers with several hundred locations. We have designed and implemented pre-dispute mandatory arbitration programs, and counseled clients on ways to improve their ADR plans to ensure that they would pass legal muster in multiple states, including California.