



James W. Bucking

Partner
Chair, Labor and Employment Law Department
Boston
617 832 1182 direct
617 832 7000 fax
jbucking@foleyhoag.com

SERVICES

Labor and Employment Law
Litigation

HONORS/AWARDS

Ranked by Chambers USA:
America's Leading Lawyers for
Business as one of Massachusetts'
leading employment lawyers
(2004-2009)

Ranked as leading Labor and
Employment lawyer in numerous
other publications, including New
England Super Lawyers,
Massachusetts Super Lawyers,
The Best Lawyers in America and
Who's Who Legal: USA

University of Pennsylvania Law
Review, Editor

Graduated valedictorian at
Northeastern University

Order of the Coif, Pennsylvania
Chapter

EDUCATION

Northeastern University, B.S.,
summa cum laude

University of Pennsylvania Law
School, J.D., cum laude, Order of
the Coif

As Chair of Foley Hoag's Labor and Employment Law Department, Jim Bucking has compiled an impressive record of success in representing corporations and other employers in union disputes, wage/hour controversies, discrimination allegations, and other labor and employment matters.

Management clients seek Jim's representation at the bargaining table in union negotiations involving the Teamsters, UFCW, Electrical Workers, Steelworkers, Utility Workers, Broadcast Employees, Service Employees, Textile Workers, Building Trades, Police and Firefighters. He also advises clients on day-to-day personnel matters, drafts employment agreements and policies, and assists with sexual harassment and discrimination investigations.

Jim has in-depth experience representing clients involved in manufacturing, distribution, retail, health care, hospitality, energy, telecommunications, janitorial, waste disposal, high tech and education. He has worked extensively on behalf of such major corporations as Anheuser-Busch, Inc., PG&E National Energy Group, Mariner Health Care, Owens & Minor, Organogenesis, MasterCard, Dominion Energy, Clear Channel Outdoor, Cogentrix Energy, Guardian Life Insurance Company, H&M, Genzyme, PolyOne Corporation, Verizon Communications and Cornell Dubilier Electronics, Inc. He also has significant experience representing such public sector employers as the Massachusetts Lottery Commission and the cities of Boston, Lawrence, and Lowell in labor disputes. He has defended many employers in court and before the Massachusetts Commission Against Discrimination against discrimination and sexual harassment complaints. In a number of these actions, Jim won summary judgment motions resulting in the dismissal of discrimination complaints against his clients while establishing new law in Massachusetts favorable to employers. Jim's extensive litigation experience also involves injunction and damages cases in court, in private arbitration and at NASD related to non-compete lawsuits.

Jim is frequently sought out for comment by major media organizations as an expert on labor and employment topics. He has been quoted in the Wall Street Journal, American Lawyer, The National Law Journal, Boston Business Journal, Lawyer's Weekly, Inside Counsel, Boston.com, Salon.com, Employment Law 360, BNA Collective Bargaining Bulletin, Daily Labor Report, Human Resource Executive, Workforce Management, West HR Advisor, Supervision Magazine, HR Daily Advisor, California Job Journal and Lawyer's Journal. His broadcast media activities include appearing as a guest on Emily Rooney's "Greater Boston" program, WGBH-TV. He also spoke about layoffs on "The David Brudnoy Show" (WBZ Radio 1030 AM).

BAR AND COURT ADMISSIONS

- ÿ Massachusetts
- ÿ U.S. District Court for the District of Massachusetts
- ÿ U.S. Court of Appeals, First Circuit

REPRESENTATIVE EXPERIENCE

The following is a brief summary of James's experience and accomplishments:

- ÿ Successfully represented construction company in class action lawsuit in state court alleging misclassification of laborers, unpaid wages and other wage-hour violations, achieving withdrawal of all claims after discovery
- ÿ Sued insurance company for failing to defend employer under EPLI policy, with insurer agreeing to provide coverage as well as paying all fees and costs of both the coverage action and the underlying claim with 12% interest
- ÿ Prevailed in representation hearing before the NLRB on claim that warehousemen who occasionally drove delivery vehicles should be included in a bargaining unit of truck drivers, resulting in the withdrawal of the petition

- ✓ Obtained dismissal of equal pay claim alleging that female faculty were systematically paid less than male faculty of educational institution
- ✓ Convinced the NLRB to overturn an administrative law judge's decision against a client company, arguing successfully that the union's aggressive and unconventional behavior in presenting grievances to the company rendered the union's conduct unprotected by law (338 NLRB No. 78)
- ✓ Obtained dismissal of an NLRB election petition for a construction client in Region 34 (Connecticut) on the grounds that there was a "contracting unit"
- ✓ Advised and represented clients through six union decertification proceedings which resulted in employee votes to remove incumbent unions as bargaining representative or voluntary union disclaimers of representation
- ✓ Negotiated, on behalf of a large municipality, a city-wide project labor agreement with the Building Trades unions and drafted the executive order implementing the PLA (reported in 9/3/97 DAILY LABOR REPORT)
- ✓ Obtained a favorable verdict for our biomedical industry client (which was the lead case cited in a national publication that reports significant developments in wage and hour law) after a bench trial in U.S. District Court, by convincing the Court to dismiss a prosecution by the Department of Labor alleging misclassification of salaried employees (cited at 907 F. Supp. 512)
- ✓ Obtained several Norris-Laguardia Act injunctions in Federal Court in Massachusetts to end illegal picketing and other strike-related misconduct in the midst of a lengthy labor dispute
- ✓ Secured summary judgment motions dismissing discrimination complaints while establishing new law in Massachusetts favorable to employers, including a hearing in State Superior Court which resulted in the dismissal of an employment discrimination suit by a transsexual who asserted that this condition was a legally recognized handicap (3 Mass. L. Rptr. No. 9, 196), a hearing in Federal District Court resulting in the dismissal of a civil rights claim on grounds of preemption (906 F. Supp. 65), and a hearing in State Superior Court where the judge rejected the plaintiff's argument that an age discrimination claim constituted a continuing violation (17 Mass. L. Rptr. 699)
- ✓ Prevailed in a hostile environment sexual harassment arbitration on behalf of a supermarket client, with the arbitrator finding that the plaintiff lacked credibility
- ✓ Served as trial counsel for a major national manufacturer in a lengthy NLRB proceeding in which the client prevailed on bad faith bargaining, secondary boycott and threat of violence charges against the Teamsters Union, secured three separate federal court injunctions against the Union and won an unprecedented award of attorneys' fees and litigation costs [reported at 334 NLRB No. 137]
- ✓ Obtained Boys Markets TRO and preliminary injunction in federal court in New York, with the judge ordering 400 employees back to work after an illegal strike
- ✓ Won an NLRB trial on behalf of a power plant client which had eliminated a 30% incentive bonus during first-contract negotiations and later unilaterally implemented a variety of work rules and economic items (2006 WL 721474)
- ✓ Provided pro bono representation to a unionized legal services organization with respect to its affiliation with a non-union counterpart, including effects bargaining with the union
- ✓ Tried dozens of arbitration cases and related proceedings arising out of a hotly contested 105-employee layoff, including an administrative trial before the state Labor Relations Commission upholding the lawfulness of the layoffs (19 MLC 1551, aff'd 22 MLC 1468)
- ✓ Served as a Special Assistant Attorney General, representing a public employer in successfully overturning a civil service decision at the Massachusetts Appeals Court (60 Mass. App. Ct. 1120)
- ✓ Successfully represented a personnel placement company in a commission dispute with a former employee, securing a state court decision that limited the reach of the Massachusetts Wage Act when payment is based on contingencies (2001 WL 716911)
- ✓ Obtained dismissal, on ERISA pre-emption grounds, of a claim for health benefits for an employee's ex-spouse in state court
- ✓ Served as trial counsel for a prominent state agency in an MCAD age discrimination proceeding which resulted in a favorable verdict for our client (21 MDLR 182)
- ✓ Successfully appealed to court to overturn an arbitrator's award against a client on grounds that the arbitrator exceeded his authority under the collective bargaining agreement
- ✓ Won an NLRB trial before an administrative law judge and a resulting NLRB appeal where the union alleged that our energy industry client had improperly terminated its employee pension plan after acquiring the assets of a Massachusetts utility (341 NLRB No. 142)
- ✓ Represented numerous clients in the negotiation, implementation and litigation of card check and neutrality agreements for union organizing
- ✓ Represented a client in federal court in New York and before Region 2 of the NLRB (Manhattan) in a dispute over the union's majority status after a count of authorization cards made under a neutrality and

card check agreement

- Ÿ Obtained dismissal of an employment arbitration claim filed by a former CEO of our client company, in which the CEO sought a six-figure bonus after sale of the company
- Ÿ In first of its kind case in Massachusetts, successfully represented a manufacturing company at a 7-day trial, obtaining dismissal of harassment and discrimination claims brought by transgendered employee (23 MDLR 231)
- Ÿ Successfully represented an energy trading firm in an employment arbitration case brought by a terminated employee with the arbitrator dismissing wrongful discharge and all other claims

PROFESSIONAL / CIVIC INVOLVEMENT

- Ÿ Massachusetts Bar Association, Labor and Employment Section
 - w Chair (2001-2002)
- Ÿ American Bar Association, Labor and Employment Section
 - w NLRB Practice and Procedure Committee, New England Regional Chair
 - w Labor Agency Liaison
- Ÿ Lex Mundi, Labor and Employment Section
 - w Chair (2005-2007)
- Ÿ Town of Needham Personnel Board, Vice Chair (1994-1997)
- Ÿ Town of Needham Assessors Review Committee, Chair (1996-1997)
- Ÿ SJC Judicial Youth Corps, Legal Training

SPEECHES AND CONFERENCES

- Ÿ Panelist, "Absolutely Positively Not an Employee – New Standards for Independent Contractors?" ABA Committee on Development of the Law Under the NLRA, March 2010
- Ÿ Speaker, "Hot Issues in Labor and Employment Law: 2009 and Beyond," American Gas Association, July 2009
- Ÿ Panelist, "Neutrality and Collective Agreements, Union Avoidance and Employee Free Choice Act," Lex Mundi Institute, July 2009
- Ÿ Speaker, "Impact of the 2008 Election on Labor and Employment Laws," November 2008
- Ÿ Panelist, "Private Elections and Card Checks," NLRB Practice and Procedures Committee Meeting, March 2006
- Ÿ Panelist, "Collective Bargaining in the New Millennium," Massachusetts Bar Association, April 2005
- Ÿ Panelist, "Help! I Need an Employment Attorney," Boston Bar Association, April 2005
- Ÿ Appointee, Labor Agency Liaison Meeting, American Bar Association, November 2004 and November 2005
- Ÿ Panelist, "Collective Bargaining Process," American Bar Association, March 2004
- Ÿ Panelist, "Deferral of Information Request Charges," NLRB Practice and Procedures Committee Meeting, February 2004
- Ÿ Program Chair, "Employment Class Actions," Massachusetts Bar Association, June 2003
- Ÿ Panelist, "Wage and Hour Issues," MBA Annual Conference, May 2003
- Ÿ Speaker, "The Massachusetts Wage Act," MCLE, December 2002
- Ÿ Panelist, "Labor Relations Involving Multiple Employers," American Bar Association, June 2002
- Ÿ Panelist, "Upgrading Your Workforce in a Down Economy," Greater Boston Chamber of Commerce, February 2002
- Ÿ Panelist, "Collection and Presentation of Evidence in 10(j) Cases," 29th Annual Joint Labor Law Conference, October 2000
- Ÿ Panelist, "State & Federal Wage Statutes: What Every Employment Lawyer Should Know," Massachusetts Bar Association, March 2000

- Ÿ Speaker, "Basic Law & Procedures Under the NLRA," American Bar Association, June 1999
- Ÿ Program Chair, "The Changing Face of Employment Law," Massachusetts Bar Association, March 1998
- Ÿ Program Chair, "Lawyer in the Hot Seat: Counsel as Witness in an Employment Dispute," Massachusetts Bar Association, February 1997
- Ÿ Speaker, "The Overlap Between the NLRA and Anti-Discrimination Law," Massachusetts Bar Association, December 1996
- Ÿ Panelist, "The Beginning and End of Arbitration: Procedural and Remedial Issues," Massachusetts Bar Association, October 1996
- Ÿ Speaker, "Temps, Contractors and Telecommuters: It's Time to Face Up to the Legal Risks," Personnel Law Update Conference, October 1996
- Ÿ Speaker, "Human Resources Legal Update," Taunton Chamber of Commerce, December 1995
- Ÿ Panelist, "Domestic Violence and its Effect on the Workplace," Employee Assistance Program, October 1995
- Ÿ Panelist, "Individual Liberty vs. Collective Interests: Conflicts in the Workplace," Massachusetts Bar Association, September 1995
- Ÿ Speaker, "Violence in the Workplace," Employee Assistance Program, March 1995
- Ÿ Panelist, "Drug and Alcohol Issues in Arbitration," Massachusetts Bar Association, June 1994

PUBLICATIONS

- Ÿ "Is this the Plumber? A Sensible Construct for Determining Independent Contractor Status," ABA (2010)
- Ÿ Chapter Author, "The Family and Medical Leave Act," BNA
- Ÿ Chapter Editor, "How to Take a Case Before the NLRB," BNA
- Ÿ "Employee Terminations: 10 Must-Do Steps When Letting Someone Go," Staff Digest (2008)
- Ÿ "Confusion Over Paternity Leave in Massachusetts," Employment Law 360 (2008)
- Ÿ "Terminating an Employee: 10 Steps to Avoid Litigation," Employment Law 360 (2008)
- Ÿ "Massachusetts Wage and Hour Laws: What Every Manager Should Know"
- Ÿ Chapter: "Post-employment Benefits," Drafting Employment Documents in Massachusetts - MCLE
- Ÿ Chapter: "Discovery in Alternative Forums," Massachusetts Discovery Practice - MCLE
- Ÿ Editor, "A Guide for Massachusetts Employers: The Basics of Federal and State Labor and Employment Law"
- Ÿ "Epilepsy Foundation Raises Questions About Scope of Federal Labor Law," Massachusetts Bar Institute Section Review (Winter 2000)
- Ÿ "NLRB Rules for Employer in Election-Bar Dispute," NLRB Watch (September/October 2000)
- Ÿ "OSHA Helps Health Care Employers Curb Violence," Boston Business Journal (May/June 1996)
- Ÿ "Employers Can Be Held Liable for Third-Party Sexual Harassment," Boston Business Journal - Human Resources Supplement (August 1995)
- Ÿ "Beyond the ADA: Protection of Employees with Drug and Alcohol Problems in Arbitration," The Labor Lawyer (Winter/Spring 1995)
- Ÿ "Employers Ignore Harassment at Great Peril," Boston Business Journal (September 1994)
- Ÿ "Beyond the ADA: Protection of Employees with Drug and Alcohol Problems in Arbitration," The Disability Law Reporter Service (July 1994)
- Ÿ "Smoke-Free Environments in Employers' Hands," Boston Business Journal (May 1994)
- Ÿ "Few Labor Burdens on U.S. Companies in Mexico," Boston Business Journal (March 1994)
- Ÿ "Amendment to Personnel Record Statute Significantly Affects Massachusetts Businesses, A.I.M. and the Law" (Winter 1993)