

# Providing strategic advice and litigation services to our business clients nationwide

Our long-standing strength in representing employers in labor relations and employment litigation defense issues is complemented by our experience in dealing with the emerging issues confronting employers in the 21st century.

Our goal is to provide pragmatic business advice and a cost-effective approach aimed at helping our clients achieve results – prompting those clients to place our Labor and Employment lawyers at the top of the *Chambers USA* rankings for four consecutive years.

“Interviewers praise the **accomplished group of lawyers** for their **intellectual approach** to the law while also admiring the **effective and efficient service** on offer. The group has built a **formidable reputation** throughout New England for covering all manner of labor and employment issues...The group is at the **forefront of developments** in the law.”<sup>1</sup>

“The team was described in glowing terms to *Chambers* as **good lawyers and pragmatic business people, who understand our business, and achieve the results we need**, with clients keen to stress this **business acumen, and real-world practical side**, as crucial to their decision-making.”<sup>2</sup>

<sup>1</sup> *Chambers USA 2008: America's Leading Lawyers for Business, the Client's Guide*

<sup>2</sup> *Chambers USA 2007: America's Leading Lawyers for Business, the Client's Guide*



## Labor & Employment





# Our Services

At Foley Hoag, our Labor and Employment lawyers serve clients throughout New England and nationwide.

## Labor Law Strategies

Traditional labor law is a long-standing core strength of our practice. We have decades of experience in handling labor matters for companies in the telecommunication, manufacturing, energy, construction, retail, hospitality, transportation, janitorial, health care and higher education industries, nationally and internationally. For example, we have:

- Provided counsel to an international manufacturer in an ongoing dispute with its labor union. Our lawyers served as trial counsel in a lengthy NLRB proceeding where our client prevailed on charges against the Teamsters Union. The charges involved bad-faith bargaining, secondary boycotts and threats of violence. We also helped our client secure three separate federal court injunctions against the union and won an unprecedented award of attorneys' fees and litigation costs.
- Successfully represented a Fortune 100 telecommunications company in labor arbitrations challenging a spin-off valued at almost \$3 billion.
- Represented a major telecommunications client in the first significant decision by the NLRB relating to neutrality and card-check agreements. The NLRB, reversing a regional director's decision, agreed with our client that the union could not pick and choose between a bargained-for procedure concerning a card-check process and the statutory election process.
- Represented a non-unionized, entrepreneurial seller of electricity in its acquisition of several unionized power plants in New England. We defeated efforts to enjoin the \$1.7 billion dollar transaction; successfully handled labor arbitrations emanating from the transaction; advised our client and assisted in negotiating successful transitions, which have assisted in building sound relationships with the unions when possible; and represented the client before the National Labor Relations Board and in related proceedings.

## Wage and Hour Litigation

We have a significant wage and hour defense practice, litigating claims brought under federal and state laws, including class actions, FLSA collective actions and "hybrid" actions. We have successfully represented clients across numerous industries in cases involving claims of misclassification of employees as exempt, "off the clock" and other non-payment of wages cases, and unpaid meal and rest period cases.

- We aggressively defended a construction company accused of hiring immigrant workers as independent contractors and then failing to pay them overtime. Our forceful approach to the case caused class counsel to seek an early resolution, which resulted in a mediated settlement.
- We have successfully represented retailers in several states in defending putative class actions involving claims such as failure to provide meal and rest breaks, untimely payment of wages, off-the-clock work, and alleged non-compliance with laws relating to provision and maintenance of uniforms and coerced patronage of products.

## Non-Competition Agreements and Related Issues

We have extensive experience in prosecuting and defending disputes involving enforcement of non-competition, non-solicitation and confidentiality agreements, as well as related claims of trade secret misappropriation and violation of unfair competition laws. We have developed strategic approaches to employment contracts to protect our clients' business interests, both at hire and termination. We also advise prospective employers on appropriate approaches to dealing with existing restrictive agreements of new hires.

- On behalf of a prominent hedge fund, we obtained emergency preliminary injunctive relief in federal court blocking the further transfer to a competitor of our client's core intellectual property and supporting databases stolen electronically by an employee. The Court's order permitted us to seize all of the employee's computers and electronic media from his homes, automobiles and rented storage units.
- On behalf of a start-up, we defeated a multi-national cosmetics company's attempt to enjoin our client's hire of a new CEO to oversee its product development and marketing efforts; filed a declaratory judgment action in the Business Litigation Session of the Massachusetts Superior Court seeking a ruling that our client was not a "competitor" as defined in the non-compete agreement; and defeated a request for a preliminary injunction barring his employment by our client.

## Employment Discrimination and Harassment Litigation

We have successfully represented hundreds of employer clients in cases involving claims of employment discrimination and/or harassment. We appear in federal and state courts, at the EEOC, the MCAD, and other state equal-employment-opportunity agencies. Our focus is to obtain dismissal of the plaintiff's claims at the earliest possible stage. When early dismissal was not possible, we have prevailed on behalf of our employer clients at administrative hearings, bench trials and jury trials on all types of discrimination and harassment claims.

- In the first ever case of transgender discrimination and harassment before the Massachusetts Commission Against Discrimination, we obtained a dismissal of all claims against our client. The dismissed claims were brought by a former employee, who underwent a transition from male to female during her employment. The Hearing Officer found that the evidence demonstrated a supportive, not hostile, working environment.
- We obtained an affirmance by the First Circuit Court of Appeals of a grant of summary judgment on an individual's claims that our client failed to hire him because of his race, national origin, religion, age, and disability, as well as in retaliation for an earlier lawsuit he had filed against our client's predecessor.

## Wrongful Discharge and Other Disputes

We have defended our clients' interests in lawsuits involving employment-related claims based on contract, tort and other non-statutory theories. We have successfully handled many disputes involving alleged deprivation of equity, bonuses, commissions and other forms of compensation, and claims of retaliation for alleged whistle-blowing, based on laws such as Sarbanes-Oxley.

- We successfully represented a client in the first New England complaint brought under the whistle-blower provisions of the Sarbanes-Oxley Corporate and Criminal Fraud Accountability Act of 2002. The complainant alleged that our client had terminated his employment because he informed officers and managers of our client that quarterly and annual securities filings were inaccurate and had to be corrected and because the individual refused to lie to a customer about a product issue. After a thorough investigation, the U.S. Department of Labor concluded that the claims could not be supported and dismissed the complaint.

## ERISA and Benefits-Related Litigation

We handle all types of litigation involving pension and welfare plans, including both single- and multi-employer plans. These cases involve claims of breach of fiduciary duty, denial of benefits, alienation of benefits and withdrawal liability.

- We successfully represented a large healthcare client in a multi-million dollar ERISA arbitration brought by the former chief executive of our client's predecessor entity, who asserted that he was wrongfully denied retirement benefits under a Split Dollar Agreement.

## Business Immigration Services

We provide our clients with the benefit of our 30 years of experience getting qualified foreign nationals the right to work for employers in the United States. We understand that U.S. immigration procedures can be complex and intimidating. Successfully working through the immigration maze requires careful planning, thorough analysis of the circumstances surrounding each case, selection of an appropriate strategy, and thoughtful preparation of the paperwork necessary to secure approval. Our lawyers can help you with all of these elements to help ensure that your business remains competitive.

- We represented a multinational software solutions provider in obtaining H-1B visa classifications, a Blanket L approval, individual L-1 visa classifications, and TN admissions under NAFTA; prepared complex EB-1 Multinational Executive/Manager permanent residence filings and PERM Labor Certification Applications; assisted with consular processing for visas; and successfully defended a Department of Labor LCA Compliance audit.
- We successfully guided a large janitorial services company through a complex Form I-9 Employment Eligibility Verification investigation conducted by Immigration & Customs Enforcement.

## Preventative Counseling

On day-to-day employment issues, we strive to ensure that litigation concerns do not distract from the goal of retaining good employees and improving or terminating poor employees. We assist clients in creating strategies that help achieve this goal without costly litigation. Our employment counseling services include:

- Preparation of employment agreements, employee handbooks and particular employment policies
- Advice on workforce reductions and related issues
- Wage-and-hour compliance under federal and state laws
- Compliance with the 2006 Massachusetts Health Care Reform Law
- Advice on workplace safety and OSHA compliance
- Navigating overlapping state and federal laws relating to family and medical leave
- Workplace privacy issues, including evolving data privacy laws
- Advising employers on the appropriateness of mandatory arbitration
- Investigating and responding to complaints of discrimination and averting retaliation claims
- Severance agreements
- I-9 recordkeeping audits
- Harassment, EEO and other employment practices training
- Drafting appropriate executive compensation packages
- Performing employment law compliance surveys

### Industries Served:

- + Banking
- + Construction & Development
- + Education
- + Energy and Regulated Industries
- + Government
- + Healthcare
- + Investment Advisers and Hedge Funds
- + Life Sciences
- + Manufacturing
- + Nonprofit
- + Retail
- + Technology
- + Telecommunications
- + Venture Capital and Emerging Companies