

SheppardMullin

Presents

Labor & Employment Year In Review

FALL 2018

October 30, 2018



237 Park Avenue
New York, NY 10017

Presented by:



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Agenda

Welcome and Program Overview

4:00 p.m. – 4:05 p.m.

*Presented by Jonathan Stoler,
Partner, Sheppard Mullin*

**Leading Court Decisions and Key Legislative
Developments in 2018**

4:05 p.m. – 4:30 p.m.

*Presented by Jack Kiley,
Partner, Sheppard Mullin*

**New York Employers Get Their #MeToo Movement:
NYS/NYC Mandatory EEO/Sexual Harassment Training
and Policy Requirements**

4:30 p.m. – 5:00 p.m.

*Presented by Jonathan Stoler,
Partner, Sheppard Mullin*

**Understanding the Alphabet Soup of New York Leave
Laws — PFL, ESTA, FMLA and your Company's PTO
policy**

5:00 p.m. – 5:30 p.m.

*Presented by Danielle Thompson,
Associate, Sheppard Mullin*

Will Your Workplace Be Going to the Dogs?

5:30 p.m. – 6:00 p.m.

*Presented by Chris Collins,
Partner, Sheppard Mullin*

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Labor & Employment Law Update:
2018 Year in Review

October 30, 2018

Presenters

- Jack Kiley
Sheppard Mullin, New York
- Jon Stoler
Sheppard Mullin, New York
- Danielle Thompson
Sheppard Mullin, New York
- Chris Collins
Sheppard Mullin, New York

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Program Overview

- Leading Court Decisions and Key Legislative Developments
- New York Employers Get Their #MeToo Moment - How to Comply with New York State and New York City's Mandatory EEO/Sexual Harassment Training and Policy Requirements
- Understanding the Alphabet Soup of New York Leave Laws - PFL, ESTA, FMLA and your Company's PTO Policy
- Will Your Workplace Be Going to the Dogs? A Review of Latest Trends and Best Practices For Responding to Requests for Service Animal Accommodations at Work and in Your Public Places of Accommodation

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Leading Court Decisions and Key Legislative Developments in 2018

Presented by:
Jack Kiley

Our New Supreme Court Justice is...



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Brett Kavanaugh – Former D.C. Circuit Judge



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U.S. Supreme Court Cases

- *Masterpiece Cakeshop, Inc. v. Colorado Civil Rights Commission*

- 7-2 SCOTUS decision issued June 4, 2018.
- In July 2012 a same-sex couple visited Masterpiece Cakeshop in Colorado to order a cake for their wedding reception. The bakery owner informed them that the shop would not sell wedding cakes to same-sex couples.
- **Held:** Colorado Civil Rights Commission's actions in assessing the cakeshop owner's reasons for declining to make a cake for a same-sex couple's wedding violated the free exercise clause of the U.S. Constitution.



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U.S. Supreme Court Cases

- *Janus v. American Federation of State, County and Municipal Employees (AFSCME)*

- 5-4 SCOTUS decision issued June 27, 2018.
- Janus is a child support specialist who is represented by AFSCME, but has chosen not to join the union. Instead of union dues, he is assessed a fair-share fee that is approximately 78% of the full union dues. Janus claims this violates his First Amendment Rights.
- **Held:** government workers who are non-members of a union cannot be legally required to pay agency or "fair share" fees as a condition of employment.

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U.S. Supreme Court Cases

- *Epic Systems Corp. v. Lewis, NLRB v. Murphy Oil, and Ernst & Young LLP v. Morris*

- 5-4 SCOTUS decision issued May 21, 2018.
- **Held:** Class action waivers in arbitration agreements are legal.
- Justice Gorsuch wrote: "[t]his Court has never read a right to class actions into the NLRA...the Arbitration Act and the NLRA have long enjoyed separate spheres of influence and neither permits this Court to declare the parties' [class action waiver] agreements unlawful."
- Previously:
 - NLRB, Sixth, Seventh, Ninth Circuits: class-action waivers violate the NLRA.
 - U.S. Department of Justice, Second, Fifth, Eighth Circuits: class-action waivers must be enforced under the Federal Arbitration Act.

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Pending U.S. Supreme Court Cases

- *Lamps Plus Inc. v. Varela* (9th Cir.)
 - The Ninth Circuit held that an employer consented to class arbitration when:
 - It included language in the arbitration contract that committed the parties to using arbitration “in lieu of any and all lawsuits or other civil legal proceedings”
 - Specified that arbitral claims include those “that, in the absence of this Agreement, would have been available to the parties by law.”
 - Authorized the arbitrator to “award any remedy allowed by applicable law.”
 - Issue: Whether the Federal Arbitration Act forecloses state-law interpretation of an arbitration agreement that would authorize class arbitration based solely on general language commonly used in arbitration agreements.
 - Oral argument in this case took place on October 29, 2018.

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U.S. Court of Appeals Cases

- *Zarda v. Altitude Express Inc.* (2nd Circuit)
 - The Second Circuit held that Title VII of the Civil Rights Act prohibits discrimination based on sexual orientation.
 - The Supreme Court has still not granted certiorari on this issue despite a Circuit Court split.
 - Second Circuit joined prior Seventh Circuit precedent;
 - Eleventh Circuit has held that sexual orientation is not covered by Title VII.
- *EEOC v. R.G. & G. R. Harris Funeral Homes, Inc.* (6th Circuit)
 - The Sixth Circuit recently held that transgender individuals are covered under Title VII.
 - While the EEOC also holds this view, no other Circuit Court has yet ruled that transgender employees are covered by Title VII.

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New York Legislative Developments

NY State Minimum Wage Increases

- Minimum wage rates for New York will increase again on December 31, 2018:
 - NYC employers with 11+ employees: \$15.00/hour.
 - NYC employers with <10 employees: \$13.50/hour.
 - Long Island and Westchester County employers of any size: \$12.00/hour.
 - Other New York State employers: \$11.10/hour.

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NY State Exempt Employee Salary Test

- On December 31, 2018, weekly salary thresholds for exempt status will increase:
 - NYC employers with 11+ employees: \$1,125/week.
 - NYC employers with <10 employees: \$1,012.50/week.
 - Long Island and Westchester County employers of any size: \$900/week.
 - Other New York State employers: \$832/week.

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NYS Warning on Non-Compete Agreements

- On September 19, 2018, New York Attorney General (NYAG) released Frequently Asked Questions (“FAQ”) for non-compete agreements
- FAQ asked and answered following questions:
 - What is a non-compete agreement?
 - Are non-competes legal?
 - How could a non-compete affect me?
 - How do employers enforce non-competes?
- Advised employees on steps to take prior to and after signing non-compete.
- Emphasized NYAG’s efforts to end overly broad non-competes.

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NY City Law: Third Gender Category Added to Birth Certificates

- On October 9th, 2018, Mayor de Blasio signed law establishing third gender category on birth certificates
- "X" category for people who identify neither as men nor women
- "New Yorkers should be free to tell their government who they are, not the other way around," Mayor de Blasio said.



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New Jersey Legislative Developments

New Jersey Paid Sick Leave Act

- Paid Sick Leave Act took effect yesterday, October 29, 2018.
 - Employees accrue 1 hour of sick leave per 30 hours worked.
 - Employees can use accrued sick leave for sick and safe time, similar to New York City Earned Safe and Sick Time Act.
- Equal Pay Act effective July 1, 2018.
 - Prohibits pay disparity based on any characteristic protected under the NJLAD, including gender.
 - Only allows pay disparities based on seniority or merit-based systems based on "bona fide factors" such as education, experience, training, or quality or quantity of production.
 - Prohibits retaliation against employees who discuss, request, or disclose pay information.
- Unemployment benefits for strikers.
 - If labor dispute is caused by an employer's failure to comply with collective bargaining agreement or wage and hour law.
 - 30 day waiting period for benefits unless employer hires permanent replacements.

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Federal Legislative Developments

Joint Employer Standard Revisited

- On September 14, 2018, NLRB proposed a new standard for determining whether two employers are joint employers.
- Under proposed regulation, employer may be deemed joint employer if two employers share or codetermine the employees' essential terms and conditions of employment (hiring, firing, discipline, supervision, direction of work).
- Joint employer must actually exercise substantial direct and immediate control over the essential terms and conditions of employment in manner that is not limited and routine.

Proposed Federal Tip Rules

- The DOL announced Notice of Proposed Rule Making on the FLSA tip regulations expected in October 2018.
- Amendments to Fair Labor Standards Act:
 - Employers prohibited from keeping tips given to employees, regardless of whether the employer takes a tip credit
 - Rule barring tip pooling withdrawn pending additional DOL rulemaking.
 - Thus, employers paying full federal minimum wage who do not claim tip credit are no longer prohibited from allowing employees who are not "customarily and regularly" tipped to participate in tip pools.

Marijuana – Proposed Legislation

- Several states and Washington, D.C. have legalized the use of both medical/recreational marijuana.
 - But federal government still strictly prohibits it.
- Marijuana is categorized as Schedule 1 drug.
 - Same as heroin and a stricter classification than cocaine.
- Fairness in Federal Drug Testing Under State Laws Act.
 - Would protect federal employees who use marijuana legally according to their state laws.
- Marijuana Freedom and Opportunity Act.
 - Would remove marijuana from list of controlled substances at federal level.



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NY Employers Get Their #MeToo Moment:

NYS/NYC Mandatory EEO/Sexual Harassment
Training and Policy Requirements

Presented by:
Jon Stoler

Section Overview

- NYS Sexual Harassment Legislation – Statutory Overview
- NYS Sexual Harassment Legislation – Compliance Advice

- NYC Sexual Harassment Legislation – Statutory Overview
- NYC Sexual Harassment Legislation – Compliance Advice

- Interaction Between NYC and NYS Requirements

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New York State Sexual Harassment Legislation & Compliance

NYS Sexual Harassment Statute

On April 12, 2018, the NYS sexual harassment legislation was enacted via a State budget bill.

- The budget bill **amended portions of the New York Labor Law, Human Rights Law, Civil Practice Law, and General Obligations Law**
- Includes **sweeping sexual harassment requirements** for employers
- NYS response to the #MeToo movement.



NYS Sexual Harassment Statute

New Requirements Overview:

- Arbitration restrictions
- NDA restrictions
- Sexual Harassment policy requirements
- Sexual Harassment training requirements
- Extensions of applicability for employers and non-employees



NYS Legislation - Arbitration

Arbitration Restrictions:

- As of July 11, 2018, mandatory arbitration clauses covering allegations/claims of sexual harassment are prohibited.
- No such clause will be binding on sexual harassment claims. However, no other provisions will be deemed unenforceable.

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NYS Legislation – Arbitration Clause Compliance

- There is **no affirmative requirement to include carve out language** in your arbitration clauses.
- However, we suggest **including language stating that the provision does not apply to any dispute that is not arbitrable** by law.
- Employers should **review the date of an arbitration clause** acknowledgment prior to seeking arbitration of sexual harassment claims.
- This requirement does not apply to arbitration clauses within collective bargaining agreements.
- This requirement **does not apply to arbitration of any other discrimination claims**.

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NYS Legislation - Non-Disclosure Agreements (NDAs)

As of July 11, 2018, **no NDA**, including those in settlements or court orders, **may cover sexual harassment claims** or their underlying facts unless:

- The complainant agrees or requests it;
- The same NDA terms apply to all relevant parties; and
- The complainant is given **21 days to consider the terms and 7 days to revoke** consent after providing it.

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NYS Legislation – NDA Compliance

- **2 step process:**
 - (1) initial agreement acknowledging that the complainant wishes to sign an NDA and noting that he/she has 21 days to consider;
 - (2) second agreement acknowledging that the 21-day period has ended and the NDA is in full force unless complainant revokes consent within 7 days.
- Make sure to provide NDAs to the complainant **and** the alleged perpetrator.
- **No 21/7 day requirement** for perpetrators.

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NYS Legislation - Policies

Sexual Harassment Prevention Policy

- On October 9, 2018, ALL employers in NYS were required to have a compliant policy, which includes:
 - A statement prohibiting sexual harassment;
 - Examples of sexual harassment;
 - Information on applicable federal and state statutory provisions;
 - Remedies available under the statutes;
 - Statement or information regarding applicable local laws, if any;
 - Procedure for investigation of complaints;
 - Rights of redress and all available forums for adjudicating claims;
 - Statement that sanctions will be enforced on perpetrators and supervisors who knowingly allow behavior to continue;
 - Anti-retaliation statement; and
 - A complaint form.

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NYS Legislation - Policy Compliance

- Sexual harassment policies must be provided to employees **in writing, either electronically or in physical copy**, by October 9, 2018.
- If provided electronically, **a copy must be available to all employees** electronically during working hours in a printable format.
- NYS has provided a **notice to post** in the workplace indicating where to find an employer's policy and complaint form. Employers should post this notice.
- NYS has provided a **model policy** for modification and use by employer.
- If applicable, policies should be provided in the employees' **primary language**.

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NYS Legislation – Training Compliance

Sexual Harassment Training:

- **By October 9, 2019**, ALL NYS employees are required to provide training to all employees, which includes:
 - An interactive component;
 - An explanation of sexual harassment;
 - Examples of sexual harassment;
 - Information on applicable federal and state statutory provisions;
 - Procedure for investigation of complaints;
 - Remedies, rights of redress, and all available forums for adjudicating claims; and
 - Explanation of added supervisory responsibilities.

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NYS Legislation - Training Compliance

- “Interactive” means:
 - Questions are asked of employees during program;
 - Employees are allowed to ask questions;
 - Live trainer is available to answer questions; or
 - Employees provide feedback about the training.
- Trainings should incorporate multiple interactive components where possible.

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NYS Legislation - Training Compliance

- All employees must receive **1 compliant training per year**.
- **All new hires** must receive a compliant training “as soon as possible” (but see NYC regs).
- Employees who work a “**portion of their time**” in New York, even if they are based in another state, including temporary and part time employees **should be trained**.

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NYS Legislation - Applicability

Extension of Applicability:

- NYS sexual harassment **protections now apply to non-employees** including:
 - Contractors and subcontractors
 - Vendors
 - Consultants
 - Other persons providing services pursuant to a contract (such as an intern, temp, or volunteer).
- Employers will be liable for sexual harassment against these individuals **when they knew or should have known that the individual was subjected to sexual harassment** and failed to take immediate and appropriate action.
- The NYS Human Rights Law requirements regarding sexual harassment **now apply to all employers regardless of size** (previously applied to employers with 4+ employees).

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New York City Sexual Harassment Legislation & Compliance

NYC Sexual Harassment Statute



On May 9, 2018, Mayor de Blasio signed a package of bills collectively titled the **NYC Council Stop Sexual Harassment in NYC Act**

- The Act includes several provisions that alter gender-based harassment requirements for private employers in NYC.
- NYC has not yet published comprehensive guidance or regulations interpreting the Act. We expect they will do so in the near future.

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NYC Sexual Harassment Statute



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New Requirements Overview:

- **Statute of limitations extension for gender-based harassment claims** to the NYC Commission on Human Rights.
- Extension of applicability to all employers.
- Sexual harassment poster requirement.
- Sexual harassment training requirement.

NYC Legislation – Statute of Limitations

Statute of Limitations Extension:

- **As of May 9, 2018**, the statute of limitations for bringing gender-based harassment claims to the NYC Commission on Human Rights is **extended from 1 year to 3 years**.

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NYC Legislation - SOL Compliance

- This **only includes claims** to the NYC Commission on Human Rights **brought under the NYC Human Rights Law**.
- Gender-based harassment could include both sexual harassment and harassment based on gender/sex.

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NYC Legislation - Applicability

Applicability Extension:

- **As of May 9, 2018**, the NYC Human Rights Law prohibitions on gender-based harassment was **extended to all employers**.
- The law used to be limited to employers with 4 or more employees.
- This extension *does not* apply to NYC Human Rights Law requirements regarding other protected classes (e.g., race and disability).

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NYC Legislation - Posters

Poster Requirement:

- This poster must be posted in a common area in the workplace.
- A Spanish language version must also be posted in a common area.
- Employees must be provided with a handout version of this poster at the time of hire.
- All posters and handouts are available at:
 - <https://www1.nyc.gov/site/cchr/media/sexual-harassment-campaign.page>

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NYC Legislation - Poster Compliance

- If you have not yet done so, download the 8.5 x 14 posters in both languages and post in a common area in the workplace.
- Provide handout versions with new hire paperwork in the employee's primary language by the last day of the employee's first week of work.

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NYC Legislation - Trainings

Training Requirements:

- **By December 31, 2019**, NYC employers with 15+ employees are required to provide a training to employees (including interns and independent contractors) working more than 80 hours per year, which includes:
 - An interactive component;
 - An explanation of sexual harassment;
 - A statement that sexual harassment is unlawful discrimination under state and federal law;
 - Examples of sexual harassment;
 - Procedure for complaint and investigation of complaints;
 - Complaint process available through the NYC Commission on Human Rights, NYS Division of Human Rights, and EEOC and their contact information;
 - Anti-retaliation statement and examples of retaliation;
 - Information concerning bystander intervention; and
 - Explanation of added supervisory responsibilities.

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NYC Legislation - Training Compliance

- "Interactive" means **participatory teaching** that engages trainees using audio-visuals, computer or online training programs or other approved training forms.
- "Interactive" **does not require live trainings**.
- The City will publish an **online interactive training module** that will provide the minimum training requirements but employers may use their own compliant trainings.
- Employees must be trained **once per calendar year**.
- Employers must **keep records** of such training, including employee acknowledgment forms, for 3 years.
- Covered employees and contractors need not be trained if they have worked less than 90 days.

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Interaction Between NYS & NYC Requirements

NYS and NYC Interactions

The First Training:

- The NYC training requirements can be satisfied with a properly modified NYS-compliant training.
- Although the NYC training requirements only apply to employers with 15+ employees (and independent contractors), all NYC employers should prepare to **provide a NYS and NYC compliant training by October 9, 2019.**
- Although the NYC training requirements only apply to certain employees, all NYC employers should prepare to train ALL employees as per NYS law.

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NYS and NYC Interactions

New Hire Training:

- New hires in NYC need only be trained at the next annual training if they have worked at least 90 days by the training date.
- New hires in NYS must be trained “as soon as possible”.
- **Therefore, out of an abundance of caution, ALL employers should train ALL new hires within several months after the start of employment.**

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NYS and NYC Interactions

Posting and Policy Requirements:

- Employers in NYC should **both post the NYC poster and provide the NYC handout** to new hires AND update their sexual harassment policies as per the NYS requirements.
- NYC employers should include NYC Commission contact and remedies information in NYS-compliant policy.
- NYS employers should provide a copy of their policy to new hires **before** they start work.
- NYC posters must be posted in both English and Spanish.
- Policies should be provided in English and in an employee’s primary language, if applicable.

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NYS and NYC Interactions

Arbitration and NDA Requirement:

- These apply to ALL employers in NYS, which includes employers within NYC.

Applicability Extensions:

- Remember that sexual harassment claims brought under both the NYS and NYC Human Rights Law can be brought against employers of any size and NYS claims can be brought by many non-employees.

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Understanding the Alphabet Soup of New York Leave Laws - PFL, ESTA, FMLA, and your Company's PTO Policy

Presented by:
Danielle Thompson

The Basics

Family & Medical Leave Act (FMLA):

- Federal
- All private employers with 50 or more employees
- Unpaid.

Paid Family Leave (PFL):

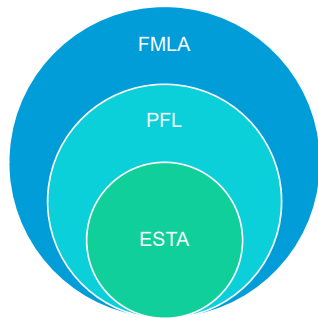
- New York State
- All private employers must participate.
- Paid through insurance provider and funded through employee payroll deductions.

Earned Safe & Sick Time Act (ESTA):

- New York City
- All private employers must provide some sick/safe time.
- Paid by employer.

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The Basics



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FMLA

- Jurisdiction:
 - Federal
- Covered Employers:
 - All employers with 50 or more employees in 20 or more workweeks of the year.
- Covered Employees:
 - Those employed for at least 12 months;
 - Who have worked at least 1250 hours within the past 12 months;
 - At a location with 50+ employees within a 75 mile radius.

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FMLA

- Reasons for Leave:
 - Birth/adoption/foster placement of a child in the first 12 months.
 - Employee's serious health condition (including pregnancy).
 - Spouse, child, or parent's serious health condition.
 - Military caregiver/Qualifying Exigency.
- Amount of Leave
 - Up to 12 weeks per calendar year.
 - For military caregiver leave, up to 26 weeks per calendar year.
 - May be taken intermittently or as reduced schedule.
 - Employer is not required to allow intermittent leave/reduced schedule for birth/adoption/foster leave.

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FMLA

- **Certification:**
 - May request certification of reason for leave if leave taken for a serious health condition or military caregiver leave.
 - May contact health care provider for certification.
- **Notice:**
 - 30 days' notice to employer if need for leave is foreseeable.
 - As soon as possible if leave is not foreseeable.
- **Record Keeping:**
 - Must preserve records for 3 years.
- **Posting:**
 - FMLA Poster.
 - Written notice to employees (usually in Handbook).

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PFL

- **Jurisdiction:**
 - New York State
- **Covered Employers:**
 - All private employers with 1 or more employee.
- **Covered Employees:**
 - Full-time employees (20+ hours/week):
 - Eligible after 26 consecutive weeks of employment.
 - Part-time employees (less than 20 hours/week):
 - Eligible after 175 days of work.

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PFL

- **Reasons for Leave:**
 - Birth/adoption/foster placement of a child in the first 12 months.
 - Family member's serious health condition.
 - Military caregiver – leave when a spouse/domestic partner, child, or parent is deployed for active duty.

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PFL

Amount of Leave:

Year	Weeks of Leave	Benefit
2018	8 weeks	8 weeks of leave will be paid at 50% of employee's average weekly wage, capped at 50% of the New York State Average Weekly Wage.
2019	10 weeks	10 weeks of leave will be paid at 55% of employee's average weekly wage, capped at 55% of the New York State Average Weekly Wage.
2020	10 weeks	10 weeks of leave will be paid at 60% of employee's average weekly wage, capped at 60% of the New York State Average Weekly Wage.
2021	12 weeks	12 weeks of leave will be paid at 67% of employee's average weekly wage, capped at 67% of the New York State Average Weekly Wage.

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PFL

- **Certification:**
 - Employee must file a PFL claim with employer's insurance provider.
 - Provider has 18 days to approve and pay or deny employee claim.
- **Notice:**
 - 30 days' notice to employer if need for leave is foreseeable.
 - As soon as possible if leave is not foreseeable.
- **Record Keeping:**
 - Should keep all relevant documents.
- **Posting:**
 - Notice of Compliance Poster (from insurance provider).
 - Must inform employees of their rights (usually in Handbook).

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PFL

Fun Facts:

- PFL can only be taken in full day increments.
- PFL cannot be taken as reduced hours or intermittent leave.
- Insurance denials of PFL leave are handled via arbitration between employee and insurance provider.
- PFL can be taken for the care of a child's serious health condition no matter the age of the child while FMLA can be taken for the same reason only if the child is under 18 or incapable of self care.



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ESTA

- Jurisdiction:
 - New York City
- Covered Employers:
 - All private employers
 - 4 or fewer employees – Must provide unpaid leave.
 - 5+ employees – Must provide paid leave.
- Covered Employees:
 - All employees who work more than 80 hours in NYC in a calendar year.
 - Including part time, temporary, on-call, undocumented employees, and employees who live outside of NYC but work in NYC.

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ESTA

- Reasons for Leave:
 - Sick Time:
 - Mental or physical illness, injury, health condition, treatment, or preventative care of employee or a family member.
 - Business closure or care of child whose school has closed due to public health emergency.
 - Family Member means any individual related to the employee by blood or whose close association with the employee is the equivalent of family.

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ESTA

- Reasons for Leave:
 - Safe Time:
 - Obtaining services from a domestic violence shelter, rape crisis center, or other service program.
 - Participating in safety planning, relocating, enrolling a child in a new school, or taking other actions to protect the safety of the employee or employee's family member.
 - Meeting with an attorney or social service provider regarding custody, visitation, matrimonial issues, protective orders, immigration, housing, or discrimination.
 - Filing a domestic incident report with law enforcement or meeting with a district attorney.
 - Attending court regarding domestic violence, unwanted sexual contact, stalking, or human trafficking.

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ESTA

- **Amount of Leave:**
 - Employees accrue 1 hour of leave per 30 hours worked.
 - Accrual is capped at 40 hours per calendar year.
 - Employers must allow up to 40 hours of accrued leave to carry over into the next calendar year unless:
 - Employer front loads all employees with 40 hours of leave at start of each year instead of accruing leave.
 - Under no circumstance is an employee entitled to more than 40 hours of leave per year.
 - Employees may only use ESTA leave if they've been employed for more than 120 days.

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ESTA

- **Certification:**
 - May request reasonable documentation or certification of reason for leave if leave lasts more than 3 consecutive days.
 - May not require a care provider to specify the medical reason for leave.
- **Notice:**
 - If foreseeable, up to 7 days' notice.
 - If not foreseeable, as soon as possible.
- **Record Keeping:**
 - Must keep all records for at least 3 years.
 - Must keep health information confidential.
- **Posting:**
 - Notice of Employee Rights.
 - Written policy including required information (usually in Handbook).

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ESTA

- **Compliant policies must include:**
 - Minimum daily increments of leave allowable (not to exceed 4 hour minimum);
 - Advance notice requirements, if any (up to 7 days is acceptable);
 - Employer-required documentation, including reason verification documentation;
 - If employer chooses to front load ESTA hours, it must inform employees in the policy;
 - Payout policy for unused leave (employer may choose whether and how to pay out unused ESTA hours); and
 - If donation of leave time is allowed, policy must state such details.
- Policies must be distributed to employees at the start of employment and within 14 days of any policy changes.

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What Does This Mean For My PTO Policy?

- **FMLA:**
 - Employer may allow or require employees to use accrued PTO prior to FMLA use.
 - Employer may choose to provide supplemental paid leave to employees (e.g., paid parental leave).
- **PFL:**
 - Employer may allow, but may not require, employees to use accrued PTO prior to or to supplement PFL.
 - Employer may choose to provide supplemental paid leave to employees (e.g., paid parental leave).
- **ESTA:**
 - Employers who provide 5 or more PTO days may eliminate accrual of ESTA leave so long as they front load at least 5 days at start of calendar year and allow PTO for ESTA reasons.
 - Such employers must still follow ESTA posting and policy requirements.

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Concurrency

- If an employee takes PFL leave for an FMLA-covered reason, or vice versa, the two leaves run concurrently.
- ESTA may be used concurrently with FMLA or PFL if used for an ESTA-covered reason.
- Employer policies should provide details on concurrence.

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Common Questions

Q: Do I have to participate in PFL even if I provide fully paid parental leave?

A: Yes! All private employers in New York State must participate in PFL. Employees who do not qualify for PFL may file a PFL waiver to avoid payroll deductions.

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Common Questions

Q: Can't I just leave my PTO policy alone if it provides 5 or more days of leave?

A: No! Employers must still comply with ESTA's policy requirements.

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Common Questions

Q: Isn't FMLA just unpaid PFL?

A: No! Among other differences, FMLA also covers employees outside of New York, and covers leave for an employee's own serious health condition.

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Common Questions

Q: How do I deal with non-payment of exempt employees during FMLA leave?

A: Unpaid FMLA leave will not affect exempt status. During intermittent or reduced hours FMLA leave, exempt employees can be paid for hours worked, including overtime.

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Common Questions

Q: How do I deal with payment of exempt employees during ESTA leave?

A: Exempt employees may be paid either their full salary or the total amount paid for the past week's work / 40 hours or total hours worked, whichever is less.

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Common Questions

Q: What if my employee takes ESTA leave during scheduled overtime?

A: Employers need not pay overtime for ESTA leave taken during overtime hours.

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Common Questions

Q: What happens if I don't comply with these laws?

A: All three laws include a process for employee complaints to government agencies and/or a private right of action. All three laws strictly prohibit discrimination and retaliation based on an employee's use of leave or complaints of unlawful practices. All three laws also allow for civil penalties.

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Will Your Workplace Be Going to the Dogs?

Presented by:
Chris Collins

Animal Accommodations at Work and in Your Public Places of
Accommodation: a Review of Latest Trends and Best Practices



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Accommodating Animals at Work and in
Public Accommodations



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Different Rules in Different Contexts

- Places of Public Accommodation (and Government Buildings)
- Employment
- Housing
- Transportation/Airlines



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Terminology

		
Service Animal An animal trained to do work or perform tasks for a person with a disability that are directly related to the disability	Emotional Support or Comfort Animal An animal whose sole function is to provide comfort or emotional support just by being with the person (or for protection). Typically not trained.	Therapy Dog/Animal An animal taken into hospitals, nursing homes, schools, etc., where it is used to provide constructive interactions with patients, residents, children, etc.

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Terminology

- Some examples of **service animal** tasks:
 - Guiding someone who is blind
 - Alerting someone who is deaf
 - Pulling a wheelchair
 - Retrieving items
 - Alerting and protecting someone having a seizure
 - Reminding to take medication
 - Calming a person with anxiety or PTSD
- A *Tough Distinction*: psychiatric service animal vs. emotional support animal
 - Trained to sense a condition and take action? = service animal
 - Mere presence comforts, but no tasks? = emotional support animal

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Places of Public Accommodation

- Places of Public Accommodation:
 - lodging (e.g., hotels)
 - food or drink (e.g., restaurants, bars)
 - entertainment (e.g., theaters, stadiums, auditoriums)
 - sales or rental establishments (e.g., stores, shopping centers)
 - service establishments (e.g., banks, doctor's offices, hospitals)
 - places of public display (e.g., museums, libraries)
 - places of recreation (e.g., parks, zoos)
 - places of education (e.g., schools)
 - social service centers (e.g., day care, senior centers)
 - places of exercise or recreation (e.g., gyms, spas, bowling alleys)
- State and Local Government Buildings

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Places of Public Accommodation

- *What Animals Qualify?*
 - **Only Service Animals** (not emotional support or therapy animals)
 - **Only Dogs** (and miniature horses under ADA)
- *Does the Animal Have to Be Trained?*
 - **Yes**, but individual training is sufficient
- *Does the Animal Have to be Certified?*
 - **No**



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Places of Public Accommodation

- *What Can a Place of Public Accommodation Do to Confirm that it is a bona fide Service Animal?*
 - Not Much
 - Ask for Documentation?
 - Ask if the dog is professionally trained? Certified?
 - Require a snazzy vest?
 - Ask about the nature disability?
 - Require a release and waiver?
- *So what can you ask?*
 - Just two questions:
 - "Is the dog a service animal required because of a disability?" [yes/no; and no follow up]
 - "What work or task has the dog been trained to perform?"
 - **Warning:** you can ask these questions only where it is not obvious that it's a service animal



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Places of Public Accommodation

- *What Rules Apply to the Service Animals Presence?*
 - The dog can go everywhere the public goes
 - You cannot charge more for the dog's presence
 - Allergies or fear of dogs are not grounds for exclusion
 - Health codes may, in some cases, have to give way to ADA

But:

- Only the disabled person is responsible for the dog
- The dog must be leashed or harnessed (unless it interferes with dog's tasks)
- Dog's owner is responsible for any damage it causes
- Dog can be excluded if:
 - not housebroken
 - not in control
 - Actual, or history of, bad behavior
 - "fundamentally alters" the nature of the goods or services offered
- No dogs in shopping carts!
- No dogs on chairs or eating at the table!
- No dogs in the swimming pool!

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Employment

- *The General Rule:* Employers must consider allowing an employee to be accompanied at work by an animal as a reasonable accommodation:
 - To perform the essential functions of the job
 - To enjoy the benefits and privileges of employment
- *What Animals Qualify?*
 - Both service animals and emotional support animals



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Employment

- *What Can an Employer do to Determine its Obligation to Accommodate a Service or Emotional Support Animal at Work?*
 - Engage in the ADA interactive process:
 - **Can** request documentation
 - to confirm disability
 - to explain the need for the service animal and what it will do
 - **Can** ask if a service animal is trained (but self-training may be sufficient)
 - **Can** propose alternatives
 - **Can** (at least sometime) ask for a demonstration of what the animal will do (if it's a service animal)
 - **Can** approve on a trial basis, subject to reassessment
 - **Can** require that the animal is vaccinated
 - **Can** require that the animal complies with local animal registration requirements

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Employment

- **What Employers *Cannot* Do:**
 - Require that the animal be registered or certified as a service or emotional support animal
 - Refuse to accommodate because of concerns about co-worker allergies or fear of dogs/animals
 - Deny the service animal because it does not directly help the employee perform essential functions

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Employment

- **What Workplace Rules Apply Once that Animal is at Work?**
 - Housebroken
 - In control, not threatening, and well behaved
 - Not disruptive
 - “One bark and you are out?” *probably not*
 - “One bite and you out?” *for sure*
 - “One growl, snap, jump, accident” ?
 - Employee is solely responsible for care, feeding, walking
 - Undue hardship and direct threat defenses apply

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Employment

- **Difficult Issues:**
 - What do you tell co-workers?
 - What do you have to do to accommodate the animal?
 - What do you do about the allergic or fearful co-workers?
 - Can the animal:
 - Go to meetings?
 - Ever be left unattended?
 - Go on sales calls?
 - Business trips?
 - Off-sites and celebrations?



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What's Next?



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- Pet-Friendly Workplaces?
- "Pawternity" Leave?
- Pet Bereavement Leave?

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Labor & Employment Law Update:
2018 Year in Review

October 30, 2018

Labor & Employment

With over 100 attorneys nationwide, our Labor & Employment Practice Group has expertise in all matters affecting the workplace, including wage and hour, class and collective actions, discrimination, harassment, retaliation, employment agreements, executive compensation, layoffs, and ERISA. Additionally, our immigration and international labor practices provide global organizations with support within the US and abroad. With our knowledge and commitment to service, our clients view us as an extension of their in-house legal departments, delivering value and top-notch counsel.



Services

- Advice and Counseling
- Disputes and Litigation
- Immigration Services
- International Mobility
- Union Management Relations

Our attorneys are nationally recognized experts

- Received top rankings from *Chambers & Partners 2018* for several of our practices, including labor and employment and litigation.
- The *Legal 500 US 2018* named Sheppard Mullin's labor and employment practice group among the best in the country.
- *Workforce Management* magazine included us on the list of the "Top Employment Law Firms."
- Individual attorneys in the group are listed in *Best Lawyers in America*, *Chambers Leading Lawyers*, *The Legal 500* and *Super Lawyers*.

We are trial ready

Our labor and employment practice is proud to boast that the firm offers some of the nation's best trial lawyers. One thing that we believe sets us apart from many of our competitors is our trial experience. Recent victories include:

- Obtained a unanimous defense verdict in a jury trial for client **McKesson Corporation** where plaintiff alleged he was misclassified as an independent contractor, including various "employment" related claims such as wrongful termination, breach of employment contract, fraud, and negligent misrepresentation.
- Obtained an unanimous defense verdict in a jury trial for client **Whole Foods** where the plaintiff alleged wrongful termination, retaliation for complaints of sexual harassment, and failure to prevent harassment.
- Won motion for summary judgment for **CA, Inc.** (a.k.a. Computer Associates) in a securing complete dismissal of national origin, breach of contract and wage hour claims.
- Won a complete dismissal of breach of contract and ERISA claims for **Sun Chemical Corporation**, saving our client more than \$17 million in potential liability.
- Won motion for summary judgment for **Long Beach Memorial Medical Center** in a class action involving 12-hour shifts, failure to pay overtime, penalties and damages.
- Obtained summary judgment in favor of client **Jones Day** in a contentious race discrimination and retaliation case.
- Defeated class certification for **Tommy Bahama** in a class action alleging failure to reimburse for uniforms, failure to provide meal and rest breaks, and other derivative claims.
- Received an award in favor of **DIRECTV** on a case involving race and national origin discrimination, age discrimination and breach of implied contract claims.
- Won summary judgment for **Waste Management** in a single plaintiff case involving allegations of termination for discriminatory and retaliatory reasons.
- Defeated class certification in a time-shaving suit against client **CalPortland Company, Inc.**
- Defeated class certification in a putative wage and hour class action against client **The Wet Seal, Inc.**
- Won summary judgment for **Hawaiian Gardens Casino** in a single plaintiff case involving allegations of disability discrimination, failure to prevent discrimination, retaliation, and wrongful discharge.
- Defeated class certification on behalf of **Orange Coast Memorial Medical Center** in a case involving meal period, rest period, pay stub, final pay, regular pay and reimbursement violations.

Representative Clients

- Hyundai
- Kaiser Foundation
- MemorialCare
- PepsiCo
- Six Flags Entertainment
- Swift Transportation
- TP ICAP
- U.S. Bank
- Waste Management
- Wells Fargo
- Whole Foods

Industries

- Aerospace
- Agricultural
- Banking
- Biotechnology
- Communications
- Construction
- Energy
- Entertainment
- Healthcare
- High Tech
- Hotel
- Insurance
- Manufacturing
- Natural Resources
- Pharmaceuticals
- Professional Service
- Public Agencies
- Publishing
- Real Estate
- Research
- Restaurant
- Retail
- Transportation
- Utilities
- Venture capital



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Practices

Labor and Employment
Litigation

Industries

Entertainment and Digital
Media
Hospitality
Retail
Sports

Education

J.D., Brooklyn Law School,
1995

B.A., SUNY Buffalo, 1991

Jonathan Stoler is a partner in the New York office. He serves as Global Practice Group Leader of the firm's Labor and Employment Practice and the National Non-Competition and Trade Secrets Team.

Areas of Practice

Mr. Stoler's practice encompasses a wide range of labor and employment matters, including the defense of single plaintiff and class action discrimination, wrongful discharge and wage/hour claims, in addition to employment contract, non-competition, whistleblower, sexual harassment and related claims. He regularly represents clients in labor and employment litigations in federal and state courts, in arbitrations before the American Arbitration Association and the Financial Industry Regulation Authority, and in proceedings before various administrative agencies, including the Equal Employment Opportunity Commission, the U.S. Department of Labor and state agencies throughout the United States. Mr. Stoler has conducted numerous internal investigations and compliance inquiries for several U.S. and foreign corporations. He also represents clients in collective bargaining negotiations, labor arbitrations and all stages of the labor election process, including election campaigns and hearings before the National Labor Relations Board.

Mr. Stoler regularly counsels both domestic and international clients regarding the preparation and administration of personnel policies and provides advice to clients regarding reductions-in-force, discipline and discharge, employee disability and leaves of absence issues. He also advises management on the labor aspects of mergers and acquisitions and the extraterritorial application of U.S. laws.

Mr. Stoler is published and quoted frequently on a variety of employment law issues in major academic and business publications such as the *National Law Review*, *The New York Law Journal*, *The Metropolitan Corporate Counsel* and *Employment Law*

360, and is a frequent speaker at national and international programs.

Admissions

New York

New Jersey

United States Court of Appeals for the Second Circuit

United States Court of Appeals for the Third Circuit

United States District Court for the Southern and Eastern Districts of New York

United States District Court for the District of New Jersey

United States District Court for the District of Connecticut

Honors

Annual Gala Honoree for Exceptional Pro Bono Service, Brooklyn Bar Association's Volunteer Lawyers Project, 2018

100 Most Powerful Employment Lawyers, *Lawdragon*, 2017

Nation's Most Powerful Employment Attorneys, *Human Resource Executive*, 2017

Mr. Stoler has consistently been recognized by *The Legal 500* as among the best labor lawyers in the U.S.

New York Super Lawyer, *Super Lawyers*, 2013-2017

Experience

Representative Clients

Ares Management: Mr. Stoler leads a global team that represents Ares on its employment law matters throughout the world.

TP ICAP (f/k/a Tullett Prebon): Mr. Stoler obtained a complete victory in a case spanning three years against a former employee and their current employer for breach of contract, breach of fiduciary duty, and tortious interference with contract. After a 3-day arbitration, the FINRA panel awarded approximately \$2 million in damages and attorneys' fees and dismissed the employee's counterclaims with prejudice. He also obtained a complete defense verdict in a case seeking to hold TP ICAP liable for multi-million dollar bonuses claimed by risk arbitrage brokers. Mr. Stoler continues to represent this client, one of the world's largest interdealer brokers, in employment matters throughout the US.

CA, Inc. (f/k/a Computer Associates): Mr. Stoler successfully represented CA, Inc. in obtaining summary judgment against a former sales executive asserting claims of marital status and national origin discrimination, claims for unpaid commissions and severance, and claims for unjust enrichment and promissory estoppel.

Modell's Sporting Goods: Mr. Stoler has successfully defended this client against employment discrimination claims and other matters.

Brooklyn Nets: This client regularly looks to Mr. Stoler to provide counsel and advice on a variety of labor and employment matters.

US Bank: Mr. Stoler represents this client in multiple employment litigations including, but not limited to, promissory note recoupment and restrictive covenant enforcement matters.

Holsa/EXSA Americas: Mr. Stoler successfully defended this client and its president against claims of pregnancy discrimination and race discrimination, obtaining a complete dismissal of all claims on a motion for summary judgment.

Mulberry: Mr. Stoler serves as national employment counsel for this UK-based retailer.

Orient Express Hotels/"21" Club: Mr. Stoler successfully represented this client in a wage and hour collective action alleging overtime and other claims asserted under the Fair Labor Standards Act and New York Labor Law.

Sun Chemical Corporation: Mr. Stoler obtained a complete dismissal of breach of contract and ERISA claims asserted by the International Brotherhood of Teamsters, saving Sun Chemical millions of dollars in potential liability.

Ornamental Installation Specialists: Mr. Stoler successfully represented this client in a preliminary injunction trial involving efforts by a competitor to its enforce non-compete agreements.

Williams Sonoma: Mr. Stoler obtained summary judgment and defeated motion for class certification in wage and hour class action brought by drivers hired by third-party trucking companies and providing delivery services to Williams Sonoma customers.

Israel Discount Bank: Mr. Stoler obtained summary judgment in multi-plaintiff action on behalf of Israel Discount Bank resulting in dismissal of 18 causes of action alleging race, color, gender, religious and ethnicity discrimination and retaliation under Title VII, Section 1981, the New York State Human Rights Law and the New York City Human Rights Law.

Articles

Overcoming Confusion For Franchisors
New York Law Journal, August 11, 2014

Developing Social Media Policies That Survive NLRB Scrutiny
New York Law Journal, March 10, 2014

Fears Of A Double-Dip Recession And Managing Workforce Reductions
The Metropolitan Corporate Counsel, November 2011

The Social Media Revolution: Recent Developments And Guidelines For Employers To Consider
The Metropolitan Corporate Counsel, December 2010

New Hurdles for N.J. Employers Seeking To Comply with Paid Leave Law
Society for Human Resource Management, January 2010

Employers Face Crackdown On Misclassification

Employment Law360, August 13, 2009

Federal and New York State Minimum Wage Increases to \$7.25 Per Hour on July 24, 2009;
Minimum Wage for Tipped Restaurant Servers and Other Servers Increases to \$4.65
Human Resource Executive, July 24, 2009

Some Employers Are Seeking Alternatives to Layoffs
Work force reductions are expensive and can hurt a company's future.
The National Law Journal, April 27, 2009

New York WARN Act Goes Into Effect On February 1, 2009
January 15, 2009

ADA Amendments Act of 2008 Signed Into Law
September 25, 2008

Enforcing Restrictive Covenants in Times of Layoffs
Can employees have their cake and eat it too?
New York Law Journal, August 11, 2008

New York Statute Bars Non-Competition Provisions in the Media Industry
August 6, 2008

Court Upholds Unequal Wage Suit Based Upon Unfair And Unequal Shift Assignments Brought By
Female Server At Manhattan Restaurant
July 21, 2008

Supreme Court Affirms Right To Sue For Retaliation Under §1981
Extends Life of Plaintiff's Claim and Potential for Damages
May 27, 2008

High Court Could Reshape Employment Practices
Employment Law360, January 15, 2008

Work Force Reductions
New York Law Journal, August 16, 2007

Structuring Effective FLSA Audits: In-house And Outside Counsel Can Partner On Wage-and-Hour
Reviews Under Fair Labor Standards Act
The National Law Journal, May 21, 2007

Global Trade Law Blog Posts

"Dodd-Frank Whistleblower Protection: For America Only," November 13, 2013

Labor & Employment Law Blog Posts

"Massachusetts – The Latest Jurisdiction to Update Its Pay Equity Laws," August 18, 2016

"Second Circuit Rules that a "Bare-Bones" Complaint Rephrasing the Text of the FLSA is
Insufficient to State an Overtime Claim," August 7, 2013

"New York State Wage Theft Prevention Act Notice Requirement," January 23, 2012

"Connecticut Becomes First State to Mandate Paid Sick Leave," July 20, 2011

Media Mentions

Brooklyn Bar Association's Volunteer Lawyers Project honors two attorneys during annual gala
Brooklyn Daily Eagle, May 31, 2018

How One Company (With Help From Sheppard Mullin) Has Raked in \$145 Million from Enforcing Its Employment Agreements
The American Lawyer, July 26, 2017

Williams-Sonoma Dodges NJ Delivery Workers' Overtime Suit
Law360, March 17, 2016

Modell's Gets Initial Nod On Overtime Settlement
Law360, October 17, 2014

Q&A With Sheppard Mullin's Jonathan Stoler
Law360, March 27, 2013

WARNing Employees
Human Resource Executive, February 11, 2009

Sheppard Mullin Adds N.Y. Labor Practice Leader
Employment Law360, May 28, 2008

Speaking Engagements

"Regulatory Update: A Review of New York State's New EEO/Anti-Sexual Harassment Laws,"
Goldman Sachs 13th Annual Hedge Fund HCM Seminar, New York, New York, October 3, 2018

"FLSA/Wage and Hour Issues in US Sports," Sports Lawyers Association 43rd Annual Conference,
Denver, Colorado, May 19, 2017

"How the U.S. Presidential Election and the Current Economy Will Impact Labor and Employment
Laws in 2013 and Beyond," Labor and Employment Year in Review, New York, New York, November
15, 2012

"Labor & Employment Law Update," New York, New York, May 9, 2012

"Labor & Employment Law: 2011 Year In Review," New York, New York, November 3, 2011

"Labor and Employment Issues Relating to the Negotiation of International Recruitment and RPO
Contracts, and the Facilitation of Overseas Office Openings," APSCo-Henley Business School
Executive Conference, London, England, October 7, 2011

"Labor & Employment Law Update: Spring 2011 Seminar," New York, New York, May 19, 2011

"Labor & Employment Law Update: 2010 Year in Review," New York, New York, November 10, 2010

"Labor & Employment Law Update: Leading Court Decisions and Key Legislative Developments in
2010," New York, New York, May 13, 2010

"Labor & Employment Law Update: 2009 Year in Review," New York, New York, November 5, 2009

"Labor & Employment Law Update: The First 100 Days of the Obama Administration," New York, New York, May 21, 2009

"The Perfect Storm: How the U.S. Presidential Election and Recent Economic Events Will Impact Labor and Employment Laws in 2009 and Beyond," New York, New York, November 6, 2008

"Critical Employment Law Issues to Consider In a Turbulent Economy," New York, New York, June 12, 2008

"Preventing Employment Discrimination in New York," Lorman Education Services, New York, New York, March 26, 2008

"Implementing Workforce Reductions: Strategies & Considerations," Continuing Legal Education Program, New York, New York, November 6, 2007

"New York Employment Law from A-Z," Lorman Education Services, New York, New York, December 1, 2005.

"An Overview of U.S. Labor Laws," National Car & Truck Rental Conference, Las Vegas, Nevada, September 12 – 14, 2005

"Employee Leaves of Absences: The ADA, FMLA, STD and WC Dilemma," Continuing Legal Education Program, New York, New York, September 29, 2004

"Duty of Loyalty and Non-Competition Agreements: A Discussion on Duty of Loyalty and Non-Competition Issues, with emphasis on Successor Enforcement, Temporal and Geographical Limitations and Assignability," American Bar Association's 2003 Annual Meeting, San Francisco, California, August 9, 2003

Events

Labor & Employment Law Update - Year in Review - New York
Fall 2018
October 30, 2018

Labor & Employment Law Update
New York
June 7, 2018

Labor & Employment Law Update - Year in Review
New York Fall 2017
November 15, 2017

Labor & Employment Law Update - New York
Spring 2017
May 23, 2017

Sheppard Mullin's Fall 2016 Labor & Employment Year in Review
Grand Hyatt New York, November 14, 2016

Sheppard Mullin's Spring 2016 Labor & Employment Law Update
June 22, 2016

Sheppard Mullin's Labor & Employment Year In Review
November 19, 2015

Sheppard Mullin Seminar For The New York Korea Trade-Investment Promotion Agency ("KOTRA")
Protecting Your Business Interests: How to Successfully Operate a Business Under the Laws of the
United States
August 28, 2015

Sheppard Mullin's Spring 2015 Labor & Employment Law Update
May 5, 2015

Labor & Employment Law Update - Spring 2014
June 9, 2014

2013 New York Labor & Employment Year In Review
Grand Hyatt New York, November 5, 2013

2013 New York Labor & Employment Update
Grand Hyatt New York, June 19, 2013

2012 Labor and Employment Year in Review
How the U.S. Presidential Election and the Current Economy Will Impact Labor and Employment
Laws in 2013 and Beyond
Grand Hyatt New York, November 15, 2012

Labor & Employment Law Update 2012
The W Hotel, New York, May 9, 2012

Labor & Employment Law: 2011 Year In Review
New York
The W Hotel, November 3, 2011

Labor & Employment Law Update - Spring 2011
Sheppard Mullin New York, May 19, 2011

Labor & Employment Law Update: 2010 Year in Review
W New York, November 10, 2010

Spring 2010 - Labor & Employment Law Update
W New York 541 Lexington Avenue (Between 49th and 50th), May 13, 2010

Labor & Employment Law Update: 2009 Year in Review
W New York, November 5, 2009

A Perfect Storm: How the U.S. Presidential Election and Recent Economic Events Will Impact
Labor and Employment Laws in 2009 and Beyond
Four Seasons Hotel, New York, November 6, 2008

Critical Employment Law Issues to Consider In a Turbulent Economy
For HR Practitioners and General Counsel
Grand Hyatt New York - Park Avenue at Grand Central Terminal, June 12, 2008

Memberships

Board of Directors, New York Lawyers for the Public Interest



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Practices

Labor and Employment

Education

J.D., George Washington University Law School, Notes Editor, *George Washington Law Review*, 1990, *with honors*

M.A., Fordham University, 2008

B.A., University of Notre Dame, 1987, *with honors*

Christopher Collins is a partner in the Labor and Employment Practice Group in the firm's New York office.

Areas of Practice

For more than 20 years, Mr. Collins has represented management clients in litigation alleging employment discrimination, sexual harassment, retaliation, breach of contract, as well as cases involving non-compete agreements and compensation disputes. In litigated matters, he has represented clients in a wide range of fields, including financial services, insurance, technology, management consulting, entertainment, media and advertising.

In addition to court litigation (including jury trials), he routinely represents management clients in FINRA arbitrations, before administrative agencies and in mediation. He also represents companies and executives in employment contract negotiations.

Mr. Collins also has a substantial advice and counseling practice, partnering with clients on policy design, litigation avoidance strategies, and compliance best practices, including issues involving progressive discipline, disability accommodation and minimizing exposure to retaliation allegations. He also routinely conducts training on a variety of employment law compliance subjects.

Admissions

Connecticut

New Jersey

New York

U.S. Court of Appeals - Second Circuit, Third Circuit

U.S. District Courts - Southern and Eastern Districts of New York, District of New Jersey, District of Connecticut

Honors

Labor and Employment, *Legal 500*, 2016

Experience

- Represented financial services firm in 2 ½ week jury trial in case alleging breach of contract and related claims by former employee. Complete jury verdict for defendant (2014).
- *Giller v. Oracle USA, Inc.*, 2012 WL 467323 (S.D.N.Y. 2012), *aff'd*, 512 Fed. Appx. 71 (2d Cir. 2013), *cert. denied*, 134 S.Ct. 531, 187 L.Ed.2d 394 (2013). Obtained dismissal of plaintiff's petition to vacate arbitration award in commission compensation dispute, affirmed by Second Circuit on appeal.
- *DiGirolamo v. MetLife Group, Inc.*, 2011 WL 2421292 (S.D.N.Y. 2011), *aff'd*, 494 Fed. Appx. 120 (2d Cir. 2012). Obtained summary judgment for client dismissing race, gender, and national origin discrimination claims.
- *Lee and Sliger v. MetLife, Inc.*, N.Y. Supreme Court, Kings Co. (2009). Obtained summary judgment for defendant dismissing contract and fraudulent inducement claims.
- *Prudent v. Caspi & Travel Bound*, 2004 WL 1907749 (S.D.N.Y. 2004). Obtained dismissal of individual defendant in Title VII case.
- *Blum v. New York Stock Exchange, Inc.*, 298 A.D.2d 343, 751 N.Y.S.2d 202 (2d Dept. 2002). Obtained summary judgment for NYSE dismissing ADA Title III claim for accommodation on stock exchange floor, affirmed by N.Y. Appellate Division on appeal.
- *Preston v. American Federation of Television and Radio Artists Health Fund*, 2002 WL 1009458 (S.D.N.Y. 2002), *aff'd*, 63 Fed.Appx. 536 (2d Cir. 2003). Obtained dismissal of ERISA claims for wrongful denial of benefits and breach of fiduciary duty on behalf of benefits fund and its trustees.
- *Donofrio v. New York Times*, 2001 WL 1663314 (S.D.N.Y. 2001). Obtained summary judgment for defendant dismissing ADA reasonable accommodation claims based on plaintiff's failure to engage in interactive process.
- *Williams v. Alliance Nat. Inc.*, *aff'd*, 24 Fed. Appx. 50 (2d Cir. 2001). Obtained summary judgment for defendant client in Title VII race discrimination case; affirmed by Second Circuit on appeal.
- *Campbell v. Alliance National Inc.*, 107 F.Supp. 2d 234 (2000). Obtained summary judgment for defendant client in Title VII race discrimination case.
- *EEOC v. Museum of Modern Art*, 97 Civ. 9571 (S.D.N.Y. 1999). Represented MoMA in jury trial brought by EEOC alleging disability discrimination. Complete jury verdict for defendant.
- *Pascuiti v. New York Yankees*, 87 F.Supp.2d 221 (S.D.N.Y. 1999). Obtained order establishing burdens of proof in ADA Title III stadium accessibility case.
- *Unotti v. American Broadcasting Companies, Inc.*, 180 Misc.2d 543, 689 N.Y.S.2d 870 (N.Y. Sup., 1999). Obtained summary judgment for defendant dismissing retaliation claim under NY Human Rights Law.
- *Toro v. Depository Trust Co.*, 166 F.3d 1201 (2d Cir. 1998). Obtained dismissal of disability discrimination claims, affirmed by Second Circuit on appeal.

Articles

Labor & Employment Law Blog Posts

"New NYC Law Requires Employers to Engage in "Cooperative Dialogue" for Workplace Accommodations," July 31, 2018

"New York City Temporary Schedule Change Law Now in Effect," July 25, 2018

"Second Circuit Holds that FLSA Settlements Require Court or Department of Labor Approval," September 18, 2015

"NYC Council Votes to Sharply Restrict Employer Use of Criminal Background Checks," June 12, 2015

"Supreme Court Sides with EEOC in Abercrombie & Fitch Hijab Case," June 12, 2015

"Sixth Circuit Holds That Ford Motor Co. Was Not Required to Accommodate Telecommuting," April 23, 2015

"Major Shakeup at NYC Commission on Human Rights," December 1, 2014

"The EEOC's Assault on Separation Agreements – A Bump in the Road, But It's Far From Over," October 29, 2014

"DOL Proposes to Amend FMLA Definition of "Spouse" to Include Same-Sex Marriages," July 17, 2014

"Expected Executive Order Protecting LGBT Employees has Implications for Employers," June 23, 2014

"Court Upholds New Jersey's Ban on Unemployment Discrimination in Job Advertisements," February 6, 2014

"NLRB Abandons Fight Over Mandatory Workplace Poster Rule," January 22, 2014

"New York Unemployment Benefits No Longer Available to Former Employees Receiving Severance," January 10, 2014

"New York City Now Requires Reasonable Accommodations for Pregnant Workers," October 2, 2013

"New Jersey Law Now Protects Employees Who Ask Fellow Employees (or Former Employees) for Their Salary Information," September 26, 2013

"New Jersey Employers May Not "Like" State's New Social Media 'Privacy Settings,'" September 12, 2013

Events

Labor & Employment Law Update - Year in Review - New York
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Labor & Employment Law Update - New York

Spring 2017
May 23, 2017

Accommodating Disabilities with Acumen, Protecting Data with Diligence, and Avoiding Class
Actions with Class

Retail Best Practices
September 29, 2015

The Williams Institute NYC Mixer
May 18, 2015

Sheppard Mullin's Spring 2015 Labor & Employment Law Update
May 5, 2015

2014 Labor & Employment Year In Review
November 13, 2014

2013 New York Labor & Employment Year In Review
Grand Hyatt New York, November 5, 2013

Memberships

New York City Bar Association, LGBT Rights Committee

New York State Bar Association

LGBT Bar Association of Greater New York



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Practices

Labor and Employment

Industries

Hospitality

Life Sciences and FDA

Education

J.D., Fordham University
School of Law, 1989

B.A., Amherst College,
1984

Mr. Jack Kiley is a partner in the Labor & Employment Practice Group in the firm's New York office.

Areas of Practice

Mr. Kiley represents management in all areas of labor and employment law, from advice and counseling to litigation to collective bargaining. His representative clients range from *Fortune* 100 corporations to not-for-profit agencies.

Mr. Kiley expands the firm's capabilities in areas such as securities arbitrations, labor union organizing, contract negotiations and board proceedings. He has litigated and arbitrated numerous cases in federal and state courts and before the National Association of Securities Dealers (NASD), New York Stock Exchange (NYSE) and American Arbitration Association (AAA). He has successfully defended against organizing campaigns, represented employers in collective bargaining and defended against NLRB proceedings.

Mr. Kiley also routinely partners with human resource professionals, management and in-house counsel in providing consultation, advice and training on all matters having labor and employment implications, including legal compliance issues, employee performance management, reductions-in-force and facility closings, employment contracts and union awareness.

Admissions

Connecticut

New York

Honors

Labor and Employment, *Legal 500*, 2014, 2018

New York Super Lawyer, *Super Lawyers*, 2010-2012, 2014-2017

Articles

"Recent Decisions Clarify Scope of Third-Party Retaliation Doctrine," *New York Law Journal*, October 21, 2013

Media Mentions

How One Company (With Help From Sheppard Mullin) Has Raked in \$145 Million from Enforcing Its Employment Agreements

The American Lawyer, July 26, 2017

Money Brokers Less Bullish on Talent Poaching After \$9M Verdict?

Bloomberg, December 21, 2016

Events

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Sheppard Mullin's Spring 2016 Labor & Employment Law Update

June 22, 2016

2013 New York Labor & Employment Year In Review

Grand Hyatt New York, November 5, 2013

2013 New York Labor & Employment Update

Grand Hyatt New York, June 19, 2013



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Practices

Labor and Employment

Danielle Thompson is an associate in the Labor and Employment Practice Group in the firm's New York office.

Education

J.D., Columbia Law School,
2016, *Harlan Fiske Stone*
Scholar

B.A., University of
California, Santa Barbara,
2012, *magna cum laude*

Admissions

New York

Languages

French

Articles

Labor & Employment Law Blog Posts

"New York State Publishes Updated Sexual Harassment Materials and Information," October 2, 2018

"New York State Publishes Draft Model Sexual Harassment Materials," August 30, 2018

"New NYC Law Requires Employers to Engage in "Cooperative Dialogue" for Workplace Accommodations," July 31, 2018

"New York City Temporary Schedule Change Law Now in Effect," July 25, 2018

"Update: Mayor Bill de Blasio Signs into Law the Stop Sexual Harassment in NYC Act," May 10, 2018

"New Jersey Enacts Paid Sick Leave Act," May 8, 2018

"New Jersey Equal Pay Act Signed Into Law," May 2, 2018

"New York City Council Enacts Package of Bills to Combat Sexual Harassment," April 13, 2018

"Department of Labor Announces New Payroll Audit Pilot Program," March 7, 2018

"New Jersey Proposes to Drastically Restrict the Use of Non-Compete Agreements," December 6, 2017

"New York State Department of Labor Proposes Increases to Overtime Exempt Salary Threshold," November 21, 2016

Events

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