



Michael J. Muskat

Mike is Board-certified in Labor & Employment Law by the Texas Board of Legal Specialization and has developed a wide range of experience in and litigating employment and labor law matters and in counseling employers on their obligations under the laws. Representative matters include wrongful termination and discrimination claims, FLSA compliance, employment eligibility verification and I-9 compliance, union-management issues, arbitration of employment disputes, employment agreements, and noncompetition and trade secrets matters.



Representative Experience

Union Organizing and Traditional Labor Law

- Conducted training sessions for supervisors on union organizing drives and presented in-house seminars on union campaigns.
- Prevailed in labor arbitration proceeding involving dispute over union member's retention of seniority after a leave of absence.
- Assisted employer in the Texas Medical Center in defeating union organizing drive involving most of the job classifications within the organization.
- Negotiated collective bargaining agreements on behalf of arts organization and provided client with advice on labor law issues arising throughout the bargaining process.
- Obtained dismissal of claims brought against a non-union employer before the NLRB alleging that employee was terminated for engaging in concerted, protected activity under the National Labor Relations Act.
- Revises and updates nonsolicitation and nondistribution policies.

Employment Litigation

- Obtained summary judgment on behalf of an investment firm alleged to be the plaintiff's "joint employer" in a sex and pregnancy discrimination lawsuit.
- Obtained dismissal of sexual harassment claim against large hospital system in the Texas Medical Center.
- Defended and obtained a favorable settlement on behalf of a large private medical practice in a breach of contract and fraud suit brought by a terminated physician.
- Obtained dismissal of sexual orientation discrimination claim against employer in the Texas Medical Center.
- Obtained the dismissal of a pregnancy discrimination claim against a large dental group.

Arbitration

- Obtained ruling from U.S. Fifth Circuit Court of Appeals affirming district court's decision that plaintiff waived right to arbitrate ERISA dispute.
- Obtained favorable award in arbitration proceeding against employee's claim of age discrimination arising out of reduction-in-force at oilfield services company, and prevailed on employer's counterclaims for breach of a nondisclosure covenant.
- Prevailed in arbitration proceeding involving significant claims of racial harassment at chemical plant.
- Prevailed in arbitration proceeding involving claims of breach of employment contract and promissory estoppel brought by executive at a large engineering and construction company.
- Obtained enforcement of arbitration agreements on many occasions. See, e.g., *Pierce v. Kellogg, Brown & Root, Inc.*, 245 F. Supp.2d 1212 (E.D. Okla. 2003).
- Drafts arbitration agreements for employers.

Noncompetition and Trade Secrets

- Obtained arbitration award against a former employee for breach of a confidentiality agreement occurring when the employee took trade secrets and confidential information upon his termination of employment.
- Assisted in obtaining Temporary Restraining Order on behalf of a medical organization against an employee who took the employer's confidential information.
- Reviews and prepares noncompetition and nondisclosure agreements on behalf of employers and individuals.

Results depend on facts of each case.

Professional Activities and Bar Memberships

- **Board-certified** in labor and employment law by The Texas Board of Legal Specialization.
- **Listed:** "Texas Rising Star" in labor and employment law, Texas Monthly, 2005-2009 and in employment litigation, 2004.
- **Listed:** Best Lawyers in Houston, "H" Texas magazine, 2008
- **Speaker:** "Family and Medical Leave Act" and "Fair Labor Standards Act," M. Lee Smith seminars, October/November 2008; "Workplace Privacy in the 21st Century," Texas Employment Law Council seminar, April 2008; "Labor & Employment Law Developments that H.R. Professionals Need to Know," Houston Society for Healthcare Human Resources Administration, February 2008; "Cutting-Edge Employment Law Strategies," Texas Institute for Continuing Legal Education, October 2007 (program chair); "Employment Law Icebergs," South Texas College of Law Symposium, July 2007; "Best Practices for Documenting Employee Performance," Texas Medical Association Seminar, July 2007; "Discrimination Law 101," Council on Education and Management Seminar, March 2007; "Risky Business: What You Need to Know About an Employer's Obligation to Protect Employee Data," Houston Bar Association Labor & Employment Section, December 2006; "Update on Drafting and Enforcing Arbitration Agreements," Texas Institute for Continuing Legal Education, November 2006; "Race, Sex, and Age Discrimination," HBA Labor & Employment Law Seminar, April 2006 and HBA CLE Program, March 2006; "Spector v. Norwegian Cruise Line," UT Maritime and Admiralty Law Seminar, November 2005; "Employment Policies," TAB seminar, January 2005; "Labor Law and Transactions," Vinson & Elkins CLE Seminar, September 2004; "Emerging Issues in Employment Law," Council on Education in Management employment law seminar, 2003; "Untangling the Overlapping Web of Leave Laws," Council on Education and Management employment law seminar, 2002 and 2003.

- **Quoted:** "When Employees of Unions Organize," Houston Chronicle, November 23, 2008; "Unions Eager for Change," Houston Chronicle, November 6, 2008; "No Catch-22 for Disabled," Houston Chronicle, October 9, 2008; "Unionizing Not as Spontaneous as it Seems," May 8, 2008; "Food for Thought," Houston Chronicle, November 15, 2007; "Free Speech Too Nasty?," Houston Chronicle, May 17, 2007; "For Better or Worse, Openness to Affect Talks," Houston Chronicle, April 12, 2007; "Contract Just Might Attract Members," Houston Chronicle, November 23, 2006; "Bakers Union Cooking Up Momentum With Its Win," Houston Chronicle, July 6, 2006; "2 Rival Unions Join at City Hall," Houston Chronicle, June 15, 2006; "Two Unions Pursue Unity," Houston Chronicle, June 10, 2006; "Each Day is Casual to Some U.S. Postal Service Folks," November 25, 2004; "Political Winds Steer Labor Board's Decisions," Houston Chronicle, June 24, 2004.
- **Panelist:** "Bad Economy, Good Practices: How Best to Handle a Reduction-in-Force," South Texas College of Law Symposium, July 2008; "Employment Eligibility Verification," Greater Houston Restaurant Association seminar, May 2008; "Wage and Hour Issues," Greater Houston Restaurant Association seminar, August 2007; "What Small Business Owners Need to Know About Wage and Hour Issues," Asian American Bar Association seminar, August 2006; "10 Reasons Employers Get Sued," Texas Association of Business seminar, March 2004.
- **Author:** "ADA Requires Employers to Make 'Reasonable' Medical Judgments," Houston Lawyer, May/June 2007; Contributor to Age Discrimination Chapter, Lindemann & Grossman's Employment Discrimination Law; "OSHA Boards Executive Accountability Ship," Houston Business Journal, January 2003; "Substantive Justice and State Interests in the Aftermath of Herrera v. Collins: Finding an Adequate Process for the Resolution of Bare Innocence Claims," 75 Texas L. Rev. 131 (1996).
- **Admitted to practice:** Texas, 1997; U.S. Supreme Court; U.S. Court of Appeals for the Fifth Circuit; U.S. District Court for the Southern District of Texas.

Education and Background

- The University of Texas School of Law, J.D. with honors, 1997 (Articles Editor, Texas Law Review; Order of the Coif).
- Bowdoin College, A.B. magna cum laude, 1993. Currently serve as Houston-area chair of the Bowdoin Alumni Schools and Interviewing Committee.
- Law clerk to the Honorable Lee H. Rosenthal, U.S. District Court for the Southern District of Texas, 1997-1998.