

# Employment Law

The Employment Law Group at Paley Rothman has earned national recognition for an uncompromising dedication to providing employer and management clients with excellent representation.

The fact that we are a mid-sized firm benefits our clients. We operate in a cost-efficient manner with lean staffing and the highest level of personal and attentive service. Our clients know that they are important to us and that we strive to understand what they want and need in any given engagement. Our matters are managed by experienced partners with the assistance of one associate, one paralegal and others only where necessary. We work hard at the outset of a relationship and throughout different phases of every matter to understand our clients' goals and objectives, and we strive to attain each of them.

Our practiced approach to litigation is to work closely with in-house counsel or other client representatives to assess risk, develop strategies, and limit legal expenses. Because of our experience handling multiple cases for several large clients, we regularly work closely with in-house counsel to insure that the services we deliver match the way they believe particular cases should be managed.

Since 2013, U.S. News & World Report has nationally ranked the Paley Rothman Employment Law Group in the area of Employment Law Litigation. In these years, only a handful of other firms, all very large national or international firms, were ranked as high or higher than Paley Rothman. In each of those years, U.S. News also nationally ranked Paley Rothman in Employment Law Management, alongside roughly a dozen other firms, again all very large all national or international firms.

The mission of our group is to help employers manage personnel and employment matters, comply with the law and preempt employment-related legal problems so that they can avoid or minimize costly disputes, litigation or liability. We partner with our clients to ensure that they recognize issues before they develop into more significant problems. We also encourage our clients to take advantage of our training, educational, and audit capabilities.

Our highly trained attorneys handle the broad spectrum of employment related issues that arise over the lifespan of a business. We have earned a reputation for providing quick and cost-effective solutions that allow our clients to focus their attention on recruiting and retaining talented employees and meeting and exceeding their business goals.

Our lawyers have extensive experience across federal and state courts and our litigators represent employers before federal and state trial and appellate courts as well as federal, state, and local administrative agencies. Some of the laws which we frequently advise on and litigate over include the FLSA; ADA; Title VII; Section 1983 of the Civil Rights Act; FMLA; USERRA; ADEA; GINA; Pregnancy Discrimination Act; NLRA; and FCRA, along with state and local wage and hour, wage payment and collection, and similar anti-discrimination, anti-harassment and anti-retaliation laws.

No two disputes or clients are identical. When disputes arise, our objectives are client-focused. We work with each client to identify risks and potential costs, as well as to determine their goals. Whether they are initiating litigation to protect their intellectual property or enforce employee agreements or they are the defendant in employment-related charges, administrative actions or litigation in federal or state court, our team of lawyers represents them aggressively, but with clear eyes on their litigation goals, business objectives, and the costs of the litigation.

Our continued involvement with federal, state and local regulators and our high-level leadership roles in many nationally recognized employment law groups help us keep abreast of cutting-edge government policy and enforcement priorities, best employment practices and litigation strategies.

## GUIDING EMPLOYERS WITH TOUGH DAY-TO-DAY ISSUES

Paley Rothman's attorneys understand that sometimes our clients just need a question answered, or someone to confirm their proposed course of action or help guide them through the wide range of employment-related issues which may arise on any given day.

We are readily available to provide clients with same-day support with advice on best practices, assistance in developing and implementing consistent policies, procedures, and strategies, and customized responses to specific situations.

Some of the most common, urgent problems that our clients seek our counsel on include, among others, hiring considerations, background check results, employee discipline and termination, disability or religious accommodations, pregnancy, FMLA, attendance and other leave issues, exempt vs. non-exempt employee classification, wage, overtime, or bonus concerns, independent contractor issues, protection against theft or misuse of company confidential information, and a full range of discrimination claims.

We also draft or modify, as necessary, client handbooks and policies and provide on-site training to managers, supervisors, executives, and other employees to help minimize risks and liabilities.

## EMPLOYMENT LAW LITIGATION

We recognize that for many employers, litigation is an expense and distraction from business operations that is to be avoided if at all possible. In some situations, however, we also know that employers are not willing to be bullied into a settlement or wish to stand on principles.

When litigation is warranted, becomes necessary, or our clients become defendants, Paley Rothman's attorneys use their extensive experience practicing before the federal and state courts and administrative agencies to represent our clients aggressively and zealously. Some of our representative matters can be found here.

The Employment Law Group attorneys litigate cases relating to:

- Discrimination and Harassment
  - Sex or gender
  - Other (potentially) protected classifications under federal, state, and local laws
  - Genetic information
  - National origin
  - Military status or service
  - Religion
  - Disability
  - Race/Color
  - Age
  - Sexual harassment
- Retaliation & Whistleblower Suits
- Unfair Labor Practices
  - Violations of the National Labor Relations Act (NLRA) and policies which may trigger scrutiny (such as use of email systems and restrictions on social media)
- Wrongful Termination or Other Termination Matters (including reductions in force)
- Wage and Hour Claims
  - Fair Labor Standards Act (FLSA), minimum wage and overtime
  - Defense of collective and class action cases
  - Local wage and hour and wage payment and collection laws
- Federal, State, and local leave obligations
  - Family and Medical Leave Act (FMLA)
  - Pregnancy, maternity, and paternity leave
  - Leave and reasonable accommodations
- Unemployment Appeals

- DOL and OFCCP Audits
- Non-Compete, Non-Solicitation, Non-Disclosure, Fiduciary Duty and Trade Secret Protection Actions

## **NON-COMPETE AGREEMENTS AND PROTECTION OF TRADE SECRETS & CONFIDENTIAL INFORMATION**

We understand that protecting a company's investment in its people and property is of utmost importance. When a departing employee makes-off with trade secrets or proprietary, confidential or intellectual property, tries to steal away co-workers, or diverts clients to the employee's new company, it can have a damaging impact on a company's business. Companies may be disappointed when they discover that their off-the-shelf or industry standard agreements may not survive scrutiny by the courts, that an agreement that is enforceable in one state may not work in another state, or that trade secret laws may not offer the broad protections they thought they did.

We work closely with our clients to understand their business needs and their particular proprietary information and property in order to create carefully tailored non-competition, non-solicitation, and non-disclosure agreements. We routinely draft or revise state-of-the-art agreements, reviewing and analyzing the applicable state and local law to help make the agreements as broadly enforceable as possible and to address jurisdictional differences. We also advise clients on the protections offered by trade secret and fiduciary liability laws, which may offer some protections in the absence of written agreements.

We also regularly litigate to enforce clients' agreements which may have been breached by former employees, to prosecute claims under trade secret and fiduciary liability laws and to defend employers who have been sued for interfering with another employer's restrictive covenant agreement. We understand the urgency of such situations and are prepared to go to court very quickly. Our attorneys have been successful in obtaining temporary restraining orders, preliminary injunctions and permanent injunctions where warranted in order to stop a former employee's unlawful actions. We also have significant experience working with forensic experts to trace a former employee's electronic trail or conduct an audit of a former employee's computers, cellular telephones, tablets or other electronic devices to gather crucial evidence.

## **AUDITS AND INVESTIGATIONS**

Businesses face challenges to their employment practices not only from aggrieved current and former employees, but also from state and federal government agencies. In many cases, a letter from a government agency announcing an investigation of an employer's practices may pose a bigger threat than the service of a complaint or demand letter from an employee or ex-employee. Employers can face investigations on several fronts, including inquiries into independent contractor classifications by workers' compensation authorities, audits of an employer's use of FLSA overtime exemptions, or challenges to an employer's policies as being discriminatory or violating employees' rights to engage in concerted activity.

Lawyers in the Employment Law Group regularly represent employers faced with audits or investigations brought by any of the numerous federal, state, and local government agencies. We assist clients in collecting and presenting information about their employment practices in a manner that will persuade the government that the client's position is fully compliant with the law or will limit the client's exposure for non-compliant policies. Oftentimes, we have successfully convinced government agencies to abandon their investigations without the need for adversarial proceedings. On other occasions, we have challenged the government's findings of illegality before courts and administrative agencies and helped our client escape the government's original negative finding. The constant is that we help clients determine their exposure and select the appropriate strategy to resolve the investigation or audit as quickly and efficiently as possible.

Additionally, our attorneys often assist employers in conducting voluntary self-audits or investigations of employees' claims and complaints, investigations which are mandatory in the harassment context and often also occur prior to litigation or the threat of litigation. These voluntary investigations allow the client to know where it stands before litigation arises or a government agency begins its own investigation and make an informed decision to vigorously defend itself or seek to settle the claim.

## **ALTERNATIVE DISPUTE RESOLUTION**

Today's litigation almost always involves some form of alternate dispute resolution as courts try hard to clear their dockets. Federal courts almost always require the parties to mediate their disputes. State courts often follow similar practices. The parties often resort to mediation using private mediators to try to reach a negotiated settlement without the expense of trial. Although they are under attack from some in Congress, the Obama Administration, state courts, and plaintiff groups, arbitration agreements are

common in many employment situations.

Our attorneys have mediated hundreds of cases and have handled numerous arbitrations as well. Hope Eastman is an employment mediator with The McCammon Group and other firm attorneys serve as mediators and/or arbitrators in employment and other types of disputes.

## **GOVERNMENT CONTRACTOR COMPLIANCE**

A significant number of our clients, especially in this region but elsewhere as well, are government contractors, both to the federal government and to other jurisdictions. This status brings with it special employment-related rules and requirements. The federal government in particular has become much more aggressive in looking at contractor practices and has issued a spate of Executive Orders and Regulations greatly expanding the reach of the Office of Federal Contract Compliance Programs (OFCCP).

Compensation discrimination is a key focus, with extensive demands for information on contractor pay practices. Employer obligations to do outreach to identify and hire applicants who are veterans or individuals with disabilities are another enforcement priority, to be enforced with conciliation agreements requiring greater government scrutiny.

We help our clients navigate these affirmative action and compliance standards. Our services include helping them to develop state-of-the-art affirmative action programs and representing them before the OFCCP when there are audits, overbroad demands for information and other challenges to employer practices.

Additionally, our Government Contracts practice group provides insight and guidance on complying with other federal procurement regulations, responding to government inquiries and pursuing protests and other challenges.

## **EXECUTIVE COMPENSATION, INDEPENDENT CONTRACTOR AND OTHER EMPLOYMENT AGREEMENTS**

Our lawyers help private companies, non-profits and new ventures establish executive compensation plans and programs for executives both during the life of the institutions and as mergers and acquisitions affect employees. We help companies, organizations, and individuals with executive compensation plans and contracts, helping them work their way through compensation issues, noncompetition, non-solicitation, and confidentiality provisions. We assist these clients to comply with tax laws, ERISA, laws affecting non-profits and employment laws. And represent them with respect to Internal Revenue Service (IRS) and US Department of Labor (DOL) audits, international tax issues, and qualified and nonqualified retirement plan design.

We also regularly prepare employment agreements for employers for their non-C Suite managers or professionals, including mid-level and upper management employment agreements, key employee agreements and agreements for physicians and other professionals.

Many companies use workforce models that include independent contractors. The use of independent contractors is a high priority enforcement area for federal and state agencies, including the IRS, DOL, EEOC and workers' compensation commissions. Entering into such an arrangement requires careful analysis of the nature of work being performed by the independent contractor. Paley Rothman has extensive experience advising employers on the use of independent contractors and where appropriate preparing independent contract agreements that address the myriad of unique issues that must be dealt with in such situations.

## **MARYLAND EMPLOYER LAW BLOG**

Our attorneys frequently blog on employment related matters that are of interest to employers, HR professionals and other attorneys. You can find all of our employment law related blogs here:

Maryland Employer Law Blog: Charting Employment Law Trends for Businesses in MD, DC, VA & Beyond