

# EMPLOYMENT AND LABOR





### **Employment and Labor**

Because every decision an organization makes with respect to managing its workforce can entail risk, every decision deserves qualified legal counsel to help reduce potential litigation and threats to the employer's brand and its bottom line.

Attorneys on Goldberg Segalla's Employment and Labor team view our representation of employers as a strategic partnership aimed at protecting the enterprise and its leaders while helping the organization advance its management philosophy and maintain its company culture. We understand the risks employers face, along with the pressures placed on management, because attorneys on this team have experienced them firsthand as in-house counsel and human resources officers at various companies in multiple industries.

Whether providing proactive counsel or vigorously defending an employer in litigation, arbitration, or an administrative action, we bring that business-judgment perspective to every matter—always with an eye toward preventing future conflicts or complications. Our ultimate goal for every client is to reach cost-effective resolutions that make sense for their business now and into the future, so we work deliberately at every stage to reduce our clients' legal expenses, case length, and settlement costs.



## **Our Experience**

Being a true strategic partner to employers means many things. Because of our extensive experience advising employers through good times as well as challenging ones, we are equipped to handle issues as they arise in real time. On a given day, you may find our team engaged in activities like:

- Developing company-tailored employee handbooks, policies, and other standards that help employers reduce the risk of lawsuits
- Counseling managers and their teams on day-to-day personnel issues
- Actively helping companies to comply with the requirements of the ADA, FMLA, and state and local sick leave laws
- Advising clients on a wage and hour audit
- Guiding management through delicate collective bargaining agreement negotiations
- Defending companies and their supervisors against unlawful termination, discrimination, or harassment lawsuits
- Providing guidance and negotiating resolutions for a company facing ADA accessibility claims
- Running interactive workshops and training sessions on-site for management

We represent private and public employers in all industries, involving unionized and non-unionized workforces, in every facet of their relationships with prospective, current, and former employees. A small sampling of the types of employers we frequently assist includes: retailers, construction firms, health care providers, manufacturers, service providers, food and beverage companies, municipalities, school districts, religious organizations, nonprofit entities, and educational institutions. In addition, we keep clients abreast of the latest changes to laws impacting the workplace through our in-house presentations, webinars, workshops, and publications and presentations for national business and legal audiences.

#### **EMPLOYMENT LITIGATION**

When litigation in an employment-related dispute is unavoidable, we bring the collective and extensive experience of our Employment and Labor team to defend against a vast range of individual or collective-action claims. We see our role as a partnership with clients, so we always focus on achieving their desired results in a costeffective and strategic manner.

We work with companies in a variety of industries, as well as employment practices liability (EPL) insurance carriers, to handle cases involving cutting-edge concerns and the toughest issues employers face.

We frequently represent employers in state and federal court through various avenues of ADR, and before federal agencies such as the U.S. Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, and the Occupational Safety and Health Administration—as well as local and state agencies that address harassment, discrimination, retaliation, family medical leave, sick pay, and unemployment.

Our successful dispute resolution record spans the full range of statutes invoked during employment litigation, including:

- Age Discrimination in Employment Act
- Americans with Disabilities Act (including Title III)
- Civil rights laws, including § 1981 and § 1983
- COBRA
- Equal Pay Act
- Fair Labor Standards Act and state wage hour laws
- False Claims Act
- Family and Medical Leave Act and state counterparts
- National Labor Relations Act and state counterparts, such as New York's Taylor Law
- Occupational Safety and Health Act
- Older Workers Benefits Protection Act
- Title VII, state, and city anti-discrimination laws
- WARN Act and state counterparts



#### HUMAN RESOURCES ADVICE AND TRAINING

If there is one thing in life and in business that is unpredictable, it is the behavior of people—a challenge managers and human resources professionals handle every day. But with proactive strategies, policies, and procedures in place, many potentially problematic situations can be anticipated, avoided, or handled efficiently before they negatively impact the company.

Goldberg Segalla's Employment and Labor practice group helps organizations implement proactive initiatives that form the backbone of long-term risk-management plans. We counsel clients through a broad range of issues in their day-to-day operations, including when seemingly innocuous actions or decisions could pose significant legal risk and exposure down the road. No question is too big or too small in a business climate marked by ever-increasing regulation and an uptick in retaliation, discrimination, and other employment claims. We work as an extension of your organization to develop the necessary strategies to manage employee relations issues in real time.

We work closely and often on-site with in-house counsel, managers, and human resources professionals to:

- Develop, implement, or strengthen practical policies and procedures that minimize risk while upholding management philosophy and company culture
- Conduct general and targeted HR audits
- Offer innovative solutions to workplace challenges surrounding the hiring, discipline, promotion, and discharge of employees
- Assist with and conduct workplace investigations
- Draft, review, and revise offer letters, employment agreements, employment manuals, and handbooks
- Implement and enforce policies regarding the usage of electronic devices, cloud computing, email, and social media
- Advise on protection and preservation of confidential information and trade secrets, along with drafting and enforcing non-competition, non-solicitation, and confidentiality agreements

- Assist with compliance under OSHA and the broad array of workplace safety and health statutes, rules, and regulations
- Provide guidance through safety and health inspections, audits, and investigations
- Negotiate and draft separation/severance agreements
- In addition, we keep clients abreast of the latest changes to laws impacting the workplace through our regularly published alerts, which are often featured by the *Employment Law Information Network* and reach thousands of employers and human resources professionals nationwide.

#### **ON-SITE WORKSHOPS**

Goldberg Segalla offers interactive employment training courses for employees, supervisors, and managers on a wide range of critical topics. These sessions answer tough legal and compliance questions, offer practical guidance, and explore proactive approaches to maintaining a positive work environment while minimizing risk or the threat of a lawsuit.

Following is a small sampling of programs our highly experienced attorneys can present at your business, tailored specifically to your needs and questions. We can present on any labor and employment law topic that would benefit your organization, and we are happy to develop custom programs to address specific concerns you may have.

- Administering the Family and Medical Leave Act (FMLA)—The Interaction of FMLA, the Americans with Disabilities Act (ADA), and Workers' Compensation
- Dos and Don'ts of Discipline—Hire Right, Fire Right
- Wage and Hour Compliance and Best Practices
- Managing Social Media in the Workplace
- Anti-Harassment and Workplace Sensitivity Training
- The Importance of Documentation in the Employee Life Cycle
- Effective Performance Evaluations

#### LABOR RELATIONS

When unionized private employers and public sector entities need a law firm tough enough to protect their interests and the bottom line in matters involving their organized labor, they turn to Goldberg Segalla. In addition to counseling and representing unionized workplaces, we work with nonunionized employers who increasingly find themselves the subject of National Labor Relations Board (NLRB) inquiry, investigation, and litigation.

Our Employment and Labor team has proven time and again its leadership in this area through success in complex and high-profile cases, with results that have saved our clients significant money. Our attorneys understand and recognize the unique issues that arise when representing employers before the NLRB and equivalent state labor boards. Our experience includes:

- Counseling on union avoidance, including issues involving union organization campaigns and elections
- Filing and defending against unfair labor practice charges
- Conducting labor negotiations, including representation during state and federal mediation and interest arbitration
- Drafting and revising collective bargaining agreements
- Litigating issues relating to collective bargaining agreements
- Handling grievance arbitrations and disciplinary procedures
- Litigation related to arbitrability, arbitration award enforcement, and award vacatur
- Conducting workplace investigations and audits

#### PUBLIC SECTOR EMPLOYMENT AND LABOR

Public employers, in addition to the special scrutiny they face from all directions, must move delicately through rules and regulations that often apply exclusively to them. Goldberg Segalla has proven itself a trusted partner to many municipal employers by protecting their interests and their reputations through day-to-day compliance advice and successful representation through highexposure, high-profile disputes.

Our Employment and Labor team has extensive experience representing public authorities, counties, cities, school districts, towns, villages, public hospitals, and other municipal entities in every capacity involving employment and labor law issues, including:

- Administrative proceedings We are equipped to handle the full range of administrative proceedings for public employers, as appropriate for the type of institution and its location. As one example to highlight the depth we bring to certain jurisdictions, in New York this includes arbitrations, New York Public Employment Relations Board (PERB) proceedings, disciplinary hearings, proceedings under Civil Service Law Sections 71 and 72, New York General Municipal Law Section 207c hearings regarding disability status, and more.
- Litigation In addition to the broad expanse of employment claims almost any employer can face, we have exceptional experience handling disputes faced particularly by public employers, including those involving constitutional law and civil rights claims, issues concerning governmental immunity, discrimination, and more.

- Education law We counsel public K-12 and higher education institutions through the myriad laws that govern and impact everything they do. For example, we counsel institutions on state laws regarding tenure, discipline, student and staff investigations, board governance and compliance, collective bargaining, Education Law, successful interaction with state Education Departments or other regulatory agencies, and other challenges faced by public schools as well as colleges and universities.
- Collective bargaining negotiations We frequently represent public employers in all aspects of collective bargaining, from developing agreement language and bargaining strategies through serving as chief negotiator.
- **Compulsory interest arbitrations** Our experience representing municipal entities in compulsory interest arbitration matters includes handling particularly complex cases with proceedings involving large police and fire departments.
- Contract administration and disciplinary proceedings — We frequently walk clients through all aspects of contract administration and personnel issues, including employee discipline and discharge, layoff and recall, and other aspects of the public employment relationship. We have a track record of obtaining favorable outcomes for employers in disciplinary and grievance arbitration.
- **Special proceedings** Our team regularly handles complex special proceedings, including Article 78 proceedings in New York, as well as petitions to stay and vacate arbitration, in which we have had noteworthy successes.

#### **OSHA AND WORKSITE SAFETY**

Goldberg Segalla's Employment and Labor attorneys partner with the firm's OSHA and Worksite Safety practice to deliver critical representation and preventive counsel to employers in multiple industries across the country—including construction, manufacturing, energy, retail, hospitality, and health care. Led by an attorney who holds the rare distinction of also being a Certified Safety Professional (CSP), this national practice group strictly focuses on occupational safety and health law issues. The group regularly advises and represents employers as follows:

- Managing OSHA inspections for employers, regularly appearing on-site immediately after catastrophic accidents, including those involving multiple fatalities
- Representing employers throughout the OSHA enforcement process, including the initial inspection, issuance of citations, and subsequent analysis of defenses and strategy

- Litigating contested OSHA citations with Department of Labor attorneys before the Occupational Safety and Health Review Commissions (OSHRC)
- Negotiating with OSHA and Department of Labor attorneys for the withdrawal and/or settlement of citations
- Counseling employers on their rights and responsibilities under OSHA
- Analyzing and developing safety programs
- Conducting and assisting with company self-audits, including ensuring that the audits remain privileged and protected from disclosure
- Providing day-to-day OSHA counsel on the myriad OSHA issues employers face, including any changes or developments in occupational safety and health law

#### **INTEGRATED DISABILITY AND WORKFORCE MANAGEMENT PROGRAM**

Many of the concerns that face employers of all types and sizes—including disability, leave, performance, workplace safety, and health management issues; employee training and compliance with state and federal regulations; workers' compensation; and arbitrations and mediations, government agency proceedings, and employment litigation—are interconnected parts of a complex operational landscape. When in-house counsel, administrators, and outside attorneys from different specialist or "Big Law" firms tackle these concerns separately, the byproducts are often cost-inefficiencies, liability, and greater risk.

We developed the **Integrated Disability and Workforce Management Program** to mitigate those costs and correct those inefficiencies. The program offers comprehensive solutions to disability, leave, performance, and health management issues, adaptable to any situation, any budget, and any set any of needs. Drawing selectively on the full scope of our firm's collective experience—with over 400 outstanding attorneys ready to weigh in and assist with

#### WAGE AND HOUR CLASS ACTIONS

We have a deep bench of attorneys experienced in representing employers in collective and class actions under the Fair Labor Standards Act (FLSA), raising every conceivable type of federal and state law wage, hour, and pay practices claims. These include allegations of exempt misclassification, independent contractor misclassification, off-the-clock work, improper calculation of the regular rate and overtime pay, countless highly specialized concerns—we are able to provide our clients with a 360-degree assessment, address inefficiencies, and craft comprehensive and cost-efficient solutions. A small sampling of our services includes:

- Auditing existing disability, leave, and health management programs
- Drafting policies and guidelines to improve the processing and management of leave requests, accommodations, and employee benefits
- Ensuring compliance with all applicable laws and regulations
- Training key personnel on best practices, program administration, and compliance obligations
- Providing legal advice for any issue, including workers' compensation benefits, leave requests, accommodation, termination of employment, and employee-related cyber risks
- Defending any legal claim or challenge

tip pooling violations, missed meal and rest breaks, donning and doffing time, pay for pre- and post-shift activities, and a host of other alleged pay practices violations under local, state, and federal law.

#### KEY CONTACTS

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