PRACTICE

Employment Law

KEY CONTACTS

Robert G. Young

T. 617-757-6537

E. ryoung@bowditch.com

PARTNERS

Ryan P. Avery

Tracy Thomas Boland

Meaghan E. Borys

Danielle Jurema Lederman

Laura M. Raisty

Timothy P. Van Dyck

Robert G. Young

OF COUNSEL

Patrick Capodilupo

David M. Felper

Carly Krolak

Steven L. Manchel

Raymond M. Ripple

ASSOCIATES

Erin Clark

Benjamin J. Hinks

Chelsie A. Vokes

OVERVIEW

The Employment Group is dedicated to representing our management clients vigorously and effectively in all aspects of their employment law needs. We pride ourselves on forging close relationships with our clients, so that we understand both their legal and business needs. The Group is comprised of experienced employment law advisors and trial lawyers who appear regularly before federal and state courts and administrative agencies throughout New England and beyond.

We provide our clients practical and sound advice on a broad range of employment law issues, frequently helping to prevent disputes from arising. When disputes cannot be avoided, we defend employers sued by their employees before state and federal courts and administrative agencies. Our litigators are well-seasoned advocates who act aggressively to achieve the best possible results for our clients. At the same time, we recognize that our clients are, and should be, sensitive to the expense of litigation.

Utilizing the expertise and training of specialists within the firm from other practice areas when appropriate enables us to bring the proper expertise to each case, while ensuring that one attorney oversees each matter from beginning to end. Our experience and commitment to the field of employment law provides our clients with unparalleled service.

We represent private employers in virtually every industry – information technology, financial services, higher education, software, life sciences, telecommunications, construction, manufacturing, entertainment, private clubs, healthcare, insurance, pharmaceuticals, and real estate. We also represent public sector employers, such as municipalities, public agencies, schools, and housing authorities. We pride ourselves on having a full understanding of our diverse clientele's particular needs and business cultures.

Employment Counseling, Compliance and Training

There is no longer a typical workplace—mobile accessibility, flexible work schedules and a global, round-the-clock mentality continue to shape how employers manage their workflow and workforce. When clients seek our advice on employee terminations, workplace violence and other urgent matters, our attorneys are accessible and responsive. We also provide counseling on a non-crisis basis on the

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entire spectrum of employment issues, including hiring practices, drug testing, reasonable accommodations for disabilities, interpretation of the leave statutes, and approaches to employee discipline.

Our attorneys have vast experience handling diverse claims, including sexual harassment, discharge, discrimination under the various federal and state anti-discrimination statutes, fraud, whistle-blowing, unfair competition, protection of confidential information and defamation. We also provide due diligence on employment issues pertaining to mergers and acquisitions. We advise and partner with our clients to avoid the costs and burdens of litigation.

Workplace Safety
We assist clients in defusing potentially violent workplace situations. Workplace safety problems, whether from dangerous equipment, environmental issues or workplace violence, seem to be on almost every evening newscast. We have a dedicated team of legal experts who guide our clients through the maze of regulatory compliance standards, inspections by the Occupations Safety Health Administration ("OSHA") and successfully resolve any citations that may be issued for alleged violations of the law.

Reductions In Force
When our clients are forced to design and implement downsizing programs, we analyze workforce data to ensure that our clients comply with the Worker Adjustment and Retraining Notification Act (WARN) and the Older Workers Benefit Protection Act.

Affirmative Action
We counsel our government contractor clients in preparing affirmative action plans and represent them in audits before the Office of Federal Contract Compliance Programs (OFCCP). We also advise academic and other clients on a range of affirmative action issues.

Employment Policies
We draft, review, and help our clients implement hiring procedures, personnel policies and employee handbooks. In addition, we design codes of conduct and required Sarbanes-Oxley whistleblower mechanisms both in the U.S. and other countries.

Management Training
We regularly provide management education and preventative programs delivered in our clients' workplaces on a range of topics, such as discrimination, diversity and teamwork, reasonable accommodation, how to conduct effective internal investigations and how to obviate employment claims before they mature into litigation. We also train supervisory and non-supervisory personnel in all areas of compliance, including prevention of unlawful harassment and equal employment opportunity claims.

Employment Litigation

Litigation – Employment

Alternative Dispute Resolution

We are experienced in the many forms of alternative dispute resolution, such as arbitration and mediation, including the structuring of these systems on a company-wide basis.

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Internal Investigations

Our lawyers conduct and/or offer guidance on internal investigations of allegations of sexual harassment, fraud, or other employee wrongdoing. We routinely conduct and/or supervise high-level investigations of senior executives for boards of directors or their special committees.

We work closely with our clients to determine their exposure, if any, to determine an appropriate remedy, reduce costs and collateral damage, retain customers, restore investor confidence, avoid or limit sanctions by government agencies, and achieve a successful and timely conclusion to the investigation.

Employment Related Agreements

We draft and review employment, independent contractor, non-competition, non-solicitation, confidentiality, non-disclosure, severance and separation agreements.

Non-Competition, Non-Solicitation And Restrictive Covenant Issues

We routinely advise clients on the enforceability of non-competition, non-solicitation and restrictive covenant agreements. We have obtained numerous injunctions for employers, enforcing such agreements against their former employees. Conversely, we frequently have defeated applications for injunctive relief brought by employers against their former employees and the employees' new employers.

EXPERIENCE

COUNSELING, COMPLIANCE & TRAINING

- A Massachusetts manufacturer was audited for potential wage and hour and overtime violations by the Massachusetts Attorney General. We reviewed all of the wage and hour records, interpreted them and then presented a clear and compelling response to the Attorney General. The employer paid its employees through a combination of cash and checks according to a complex, three-tier system of overtime for different classes of employees.
- The new president of a university needed help developing and implementing a new cabinet organization. With the client, we put a transition plan in place that made the changes to the membership and limited legal exposure and other disruptions. Our client met with the current cabinet one-on-one, taking each member's interests into account. Based on the results of those meetings, we tailored individual strategies and, over the course of about a year, the cabinet changes were successfully made.
- To its chagrin, our client – a construction design/build company – received a cease-and-desist letter after hiring a competitor's former employee. We investigated, reviewed the individual's non-compete clause and developed an argument why it was unenforceable. We negotiated an agreement with the competing company that restricted the new employee from certain, limited projects for a short period of time, which helped the client to devote its full energy toward driving growth in its business rather than getting bogged down in litigation.
- Large naval engineering company with a range of employment matters, such as assisting in reviewing workplace policies and counseling on accommodations requests and wage and hour issues.
- Reviewed and revised employee handbooks and policies to stay abreast with latest legal developments and cutting-edge trends, such as social media use by employees, medical and recreational marijuana use and new state leave laws.
- Major regional construction company in connection with parallel criminal and civil investigations into

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alleged OSHA violations.

- Counseled banking client through complex FMLA leave/ADA accommodation questions for an employee on an extended leave of absence.
- Negotiated severance agreement for high-level executive at a financial services company, using the leverage of the individual's allegations of company wrongdoing to secure additional benefits while counseling the client about the time, expense and uncertain outcome of litigation to maintain expectations.

INVESTIGATIONS

- Major regional healthcare company in an internal investigation of corporate bribery and subsequent prosecution of alleged offenders.
- High-level internal investigation involving allegations of gender discrimination brought forward by a high-level executive in a large hospital system, resulting in an amicable parting with no claims asserted against the hospital system.
- Completed investigation of allegations of race-based misconduct by the head coach of a Division I sports team.
- Completed investigation of numerous allegations of sexual harassment and professional misconduct made by employees against a university department head.
- Completed investigation of allegations of decades old criminal conduct by a nonprofit executive.
- Successfully defended a craft brewer in a wage and hour investigation by the Department of Labor.
- Conducted internal sexual harassment investigation and prepared report of findings for manufacturing company.

EMPLOYMENT-RELATED AGREEMENTS

- **A business executive finds a way to amicably move on:**
  We represented the CEO of a transportation-services company when the company's board, according to the client, usurped his authority and violated his employment agreement. This required diplomacy in dealing with the Board chair. Our client wanted to move on amicably. We offered a bundle of solutions that addressed the restrictions and avoided potential problems. In a matter of one month, the parties arrived at an agreement that was the best for both sides, including a transition period.
- Victory in a breach of contract and employment dispute including Federal Court dismissal of all ten counterclaims asserted, resulting in issuance of landmark Massachusetts federal decision clarifying non-compete law on material change doctrine in favor of client.
- **Executive-level agreement for nonprofit organization:**
  A nonprofit organization with a departing executive decided to outsource the executive's position. In the short term, the organization found an interim executive who agreed to help during the transition period and stay on at an advisory level as needed after the transition was completed. We prepared an employment agreement so that all parties understood the terms and conditions of the position.
- Structured separation agreement for an executive to remain as a consultant to maintain their eligibility for a bonus.
- Employee Loan Agreements for a major Massachusetts employer.
- Written Information Security Program Policy (WISP) for a college.
- Dismissal, affirmed on appeal, of a complaint brought by a former consultant alleging breach of

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contract and violation of G.L. c. 93A in connection with stock options that had expired before the consultant attempted to exercise them.

LITIGATION

- View experience on the Litigation page

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