

PRACTICE

Employment Litigation

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OVERVIEW

Workplace legal disputes can be highly emotional, intensely personal, embarrassingly public, expensive, time consuming and a drain on company resources, making them very difficult to resolve.

Our employment litigation team has handled cases at every stage of litigation, aiming to achieve the best possible outcome for our clients, whether by early settlement or through trial and appeal.

While we strive to help our clients avoid litigation, we are fully prepared to defend them when they are sued and work closely to develop cost-effective, results-oriented defense strategies. Whether the goal is expeditious settlement or complete defense verdict, we bring a practical perspective to every case, and have an enviable track record in successfully resolving these matters.

We are regional and national counsel for several Fortune 100 companies for all labor and employment litigation. And in those instances in which cases must be tried, we have been there and done that.

We regularly represent clients before the National Labor Relations Board, Massachusetts Labor Relations Commission, Massachusetts Commission Against Discrimination, Equal Employment Opportunity Commission, Massachusetts Department of Unemployment Assistance, United States Department of Labor, Massachusetts Attorney General's Office, Occupational Safety and Health Administration, as well as state and federal trial and appellate courts.

> *Chambers USA* recognizes our Labor & Employment practice among the most notable in Massachusetts.

How we can help

- *Administrative proceedings*: Our attorneys represent employers in a wide spectrum of matters before the various administrative agencies that regulate employment, such as the Equal Employment Opportunity Commission, United States Department of Labor, National Labor Relations Board, Occupational Safety and Health Administration and state agencies governing discrimination, unemployment and workers compensation.

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- *Discrimination and harassment*: We counsel employers on complying with federal and state equal employment opportunity laws. We routinely defend employers in discrimination, harassment and retaliation lawsuits and administrative proceedings.
- *Wage and hour*: We counsel employers on how to properly classify employees as exempt or non-exempt under the Fair Labor Standards Act and corresponding state wage and hours laws. We defend our clients in claims for back pay and overtime, including collective actions.
- Termination
- Sexual harassment
- Misappropriation of trade secrets and confidential information
- Non-compete enforcement
- Unfair labor practices
- Health and safety
- Retaliation
- Grievance and arbitration
- Employee benefits/ERISA
- Breach of contract and employment tort claims in state and federal courts
- Labor union disputes
- ERISA litigation and regulatory proceedings
- Alternative dispute resolution, arbitration, and mediation

EXPERIENCE

Complete defense verdict against a retaliation claim

A national telecomm came to us to defend a claim by a former manager before the U.S. District Court for the District of Massachusetts with potential damages in excess of $2 million. The plaintiff alleged our client retaliated against the manager for accusing the company of race discrimination. The race discrimination claims were dismissed at summary judgment and, after a one-week trial and four hours of deliberation, the jury returned a complete defense verdict. The case was appealed to the U.S. Court of Appeals for the First Circuit, where we prevailed again.

A protracted employment litigation victory helped by a skillful legal maneuver

When a senior employee believed his former employer had wrongfully withheld substantial commissions from him, he turned to Bowditch for help. A Massachusetts statute provides that employers cannot withhold earned commissions, so we contacted the company explaining our client's position, thinking that a letter might resolve the claim. Instead, the company, a manufacturer based in the Mid-Atlantic, accused our client of violating his non-compete and threatened to sue. What followed was a two-and-one-half year battle between the two sides, including multiple claims and counterclaims in two states involving breach of contract and employment issues as well as complaints of judicial favoritism. We succeeded in getting the case first before a Massachusetts state court, a preemptive maneuver that was a key to the ultimate success of the case. On the eve of a federal jury trial in Massachusetts, the company capitulated in a significant victory for our client that included Federal

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Court dismissal of all 10 counterclaims. The result included issuance of a landmark Massachusetts federal decision clarifying non-compete law involving a material change doctrine in favor of our client.

Winning with a "skillful defense" at the trial and appeals level

After we won at the trial level before a jury, our client – a national lighting manufacturer – faced an appeal to the First Circuit involving a $2.5 million claim for sexual harassment. The trial court decision was upheld on appeal where, in a published opinion, the court commented on the firm's "skillful defense."

Breach of Contract case knocked out on a Motion to Dismiss

We were called upon to represent one of our many healthcare clients when a former employee sued, claiming that her termination violated her contractual right to progressive discipline under the employee handbook. In a 22-page decision, the court completely agreed with our motion that the handbook did not constitute a contract with the plaintiff and, even if it did, the healthcare provider did not breach its terms, as the handbook did not guarantee that progressive discipline would be followed in every case.

Court stops adversary dead in its tracks in attempting to enforce non-compete

In a contentious non-compete matter, our client's former employer tried to get him to sign a separation agreement in exchange for his 35 percent share of the company. When that low-ball effort failed, the employer brought suit, seeking a preliminary injunction to prevent our client from leasing rail cars, claiming he was in breach of his non-compete obligations. Had the injunction been granted, our client would essentially have been denied his livelihood along with his ability to work in the only industry he has ever known. Following extensive briefing and an extended oral argument, the court denied the employer's motion completely, finding it had established neither a likelihood of success on the merits nor a showing of irreparable harm.

Keeping control of the outcome in a discrimination claim

A client was facing a discrimination charge from an employee, alleging that the company – a major corporation – had failed to accommodate his disability with light duty after he was injured on the job. The case was being handled as an administrative action by a state agency, and a hearing had been scheduled. We prepared at full speed and we were ready for trial. That preparation allowed us to have frank discussions with the plaintiff's lawyer as part of the ongoing efforts to resolve the case. The negotiations progressed, and the parties reached a favorable settlement on the eve of the hearing. In this way, we kept our eye on the bigger picture, and our client retained control of the outcome.

Dismissal of discrimination complaint against a Massachusetts college by a long-term employee

When a private, medium-sized university in Massachusetts terminated a male employee for poor performance, the man sued, claiming racial discrimination. He filed his claim with the Equal Employment Opportunity Commission and demanded re-instatement. We interviewed coworkers and supervisors and prepared a detailed written response. After the parties tried – and failed – to mediate a resolution, the EEOC investigated the claim. The agency dismissed the claim against our client in 2016 for lack of probable cause, and we avoided lengthy litigation for the university.

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A thorny civil rights claim dismissed on behalf of a nonprofit client

Our client, a private, nonprofit company providing substance-abuse and mental-health treatment to Massachusetts inmates, faced a civil rights lawsuit. The plaintiff was a serial litigant, who tried to get his case removed to a more favorable judicial venue. In this case, he lodged a lengthy complaint in federal court, which was dismissed when he was denied the ability to proceed *in forma pauperis*. Next, he filed an application for a *writ of habeas corpus* with the Supreme Court of the United States, which was also denied. When the serial litigant filed again in state court, we successfully argued a motion to dismiss all counts of his complaint.

Finding a successful new strategy in mid-arbitration

A unionized employer in Massachusetts moved a termination grievance to arbitration. The terminated employee demanded an unconditional reinstatement with full pay and benefits or one year's salary. Despite losing a key witness just prior to the two-day hearing, our defense team called an audible and quickly found and prepared replacement witnesses.

OTHER EXPERIENCE

- In response a civil action by the Attorney General, we represented a major global financial services company in connection with an investigation by state regulatory agencies into the client's alleged complicity into health care fraud.
- Medical group against a former physician/employee claiming breach of employment agreement and breach of fiduciary duty; we obtained complete summary judgment in the arbitration before JAMS.
- National chemical company in whistleblower claim; we obtained complete summary judgment.
- Employer against a former executive who sought $5 million for breach of contract and fraud under a separation agreement; we obtained a complete defense award, including damages in favor of the employer, plus all attorneys' fees, in a two week arbitration.
- Secured the dismissal, affirmed on appeal, of a complaint brought by a former consultant alleging breach of contract and violation of G.L. c. 93A in connection with stock options that had expired before the consultant attempted to exercise them.

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