



# Labor and Employment

**McGlinchey's dynamic team of employment lawyers keeps pace with the ever-changing laws and regulations affecting private and public companies.**

Our team provides comprehensive representation to clients throughout the nation. From a practical, business-minded standpoint, we help employers develop proactive approaches to avoid costly litigation or investigations. When litigation is the path, our team offers extensive skill and experience in litigation to best represent our clients' interests.

Based in states with some of the country's most restrictive laws and regulations governing employers – including California and New York – members of the McGlinchey Labor and Employment team advise on the full range of workplace issues and employment disputes facing private and public companies. We provide counseling and training to enable our clients' human resources and legal departments to meet regulatory compliance obligations, to forestall and mitigate disputes, and to handle the many and varied day-to-day operational situations which, if unattended, can ensnare even award-winning employers.

We advise management and train human resources personnel on their statutory obligations in a number of routine areas such as privacy, leaves of absence, background checks, and workers' compensation.

We also work side-by-side with employers to address more complex issues including:

- **Policy planning**, including best practices for selection decisions, pre-employment screening and testing, handbook development, counseling, performance reviews and evaluations, and terminations, as well as compliance with statutes surrounding privacy and confidentiality.
- **Employment agreements** such as executive benefits, noncompetition and nonsolicitation agreements, and compensation agreements that help companies retain top talent and strengthen workforces.
- **Fair Credit Reporting Act (FCRA)** issues such as disclosure, certification, pre- and post-decision notices, application consent requirements, liability assessments, and credit, criminal, and background checks on prospective and current employees.
- **Leaves of absence** in relation to the Family Medical Leave Act (FMLA), Uniformed Services Employment and Reemployment Rights Act (USERRA), Americans with Disabilities Act (ADA), and other laws relating to employee leave, including protected and unprotected absences, indefinite leave, statutory compliance, medical certification, and employer monitoring of these occurrences.
- **Workers' compensation nonsubscription counsel** in states such as Texas that allow for nonsubscription to state workers' compensation systems. We guide clients on structuring and operating occupational injury benefits programs, often an economical alternative for small businesses and low-incident organizations. We also defend nonsubscribers' interests in nonbarred claims.
- **Contingent workers and employee classification advice** in a climate where courts continue to rule on misclassification, numerosity, benefits, and tax issues. Our approach includes minimizing risk exposure, guiding clients on the management of nontraditional workforces, identifying strategies for third-party payroll agreements, compliance, defending claims in court, and addressing non-litigation taxation issues.
- **Regulatory compliance and audit support** relating to Title VII, ADA, Fair Labor Standards Act (FLSA), FMLA, Equal Employment Opportunity Commission (EEOC), Occupational Safety and Health Administration (OSHA), Internal Revenue Service (IRS), U.S. Department of Labor (DOL), National Labor Relations Board (NLRB), and the National Labor Relations Act (NLRA), among others.
- **Traditional labor issues** relating to all aspects of union management, such as picketing drives and strikes, organizing drives and elections, allegations of unfair labor practices, and labor relations in unionized work environments.
- **Administrative hearings and investigations** – We advise clients on the full range of issues which may involve the local, state and federal agencies which regulate the employment relationship, including the U.S. Department of Labor (DOL), the U.S. Equal Opportunity Employment Commission (EEOC), the U.S. Occupational Safety and Health Administration (OSHA), the Office of Federal Contract Compliance Programs (OFCCP), the National Labor Relations Board (NLRB), and the California Division of Labor and Standards Enforcement (DLSE).
- **Employee benefits**. We advise on qualified and non-qualified plans, profit sharing and stock bonus plans, corporate reorganization and workforce reductions, outsourced benefit programs, executive compensation plans, severance benefit programs, early retirement incentive programs, retiree benefit plans, multi-employer plans, occupational injury plans, COBRA issues and payroll tax audits.
- **Employment litigation**. We have an extensive record of defense verdicts and summary judgment dismissals in claims involving discrimination matters (including individual and class-based claims of race, sex, gender, pregnancy, national origin, religion, age, and disability), retaliation, wrongful termination and discharge,

wage and hour class action litigation (including California's Private Attorney General Act (PAGA) claims), Sarbanes-Oxley and whistleblower claims, ERISA, FMLA, and ADA issues, EEOC pattern and practice and systemic claims, employee benefits (including retiree medical benefits), nonsubscriber occupational injuries, workers' compensation discrimination and retaliation, noncompetition and nonsolicitation disputes, Racketeer Influenced and Corrupt Organizations Act (RICO) class actions, breach of contract and trade secret disputes, and wage and hour collective actions.

## What we See on the Horizon

Contact your McGlinchey Labor and Employment team for our latest insights about the following:

**COVID-19 (Coronavirus).** Employers must be ready to address the delicate balancing act that must be performed between ensuring that workers have a safe (disease-free) workplace and protecting employee rights, particularly confidentiality.

**Paycheck Fairness Act.** Seeking to address the gender pay gap – a statistical finding that women's annual earnings are significantly less than men's for the same jobs – federal legislators have responded by proposing the Paycheck Fairness Act. If enacted, the legislation would significantly affect litigation brought under the Equal Pay Act.

**Employer liability for health plan benefits.** Not content simply to write off patient expenses which health plans refuse to pay, some hospitals and health care providers are suing employers to pay the expenses which should be paid by health plans.

**Harassment claims in the age of the #MeToo movement.** Where in the past employees may have conspired to cover up untoward behavior in the workplace, the #MeToo movement has created a climate in which harassment claims are ever more likely – including claims related to behavior which occurred months and years ago.

## Initial Contacts

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