

Denise K. Drake

EMPLOYMENT CLASS & COLLECTIVE ACTIONS CO-CHAIR

Kansas City, MO | 816.360.4357

ddrake@polsinelli.com



Denise Drake is known for her creative and practical approach to employment law issues, as well as her sincere interest in helping employers improve their workplaces, proactively avoid litigation, and strategically defend lawsuits.

Denise has significant experience defending companies in discrimination, harassment, retaliation, wage & hour, and ERISA matters, including class actions, collective actions, multi-plaintiff, and multi-defendant lawsuits. Denise has a strong track record of defeating nationwide class and collective action certification, including nationwide cases valued at more than \$500 million.

Denise has obtained defense verdicts in single-plaintiff trials and arbitrations involving:

- Sexual and racial harassment
- Sex, race, disability, and age discrimination
- Retaliation and whistleblower claims

Denise has also successfully obtained strategic dismissals or summary judgments in cases filed across the nation. While Denise counsels clients in many industries, she has extensive experience and knowledge that allows her to advise clients on unique issues pertaining to certain industries, including:

- Construction
- Energy
- Financial services
- Food and beverage
- Gaming
- Insurance
- Health care
- Legal
- Manufacturing
- Retail
- Utilities

Denise has been recognized by clients in industry media such as *Chambers USA*, a

Capabilities

- Employment Advice & Investigations
- Employment Litigation, Arbitration & Dispute Resolution
- Labor & Employment
- Labor & Employment - Health Care
- Employment Class & Collective Actions
- Workplace Safety, Health (OSHA) & Environmental Advising
- ERISA Litigation
- Restrictive Covenants & Trade Secrets Litigation
- Class Action & Multidistrict Litigation
- Litigation

leading legal industry rankings organization:

- “Denise is known for her ‘fantastic client relations and great litigation skills.’ ‘She is very easy to work with, very responsive, and clearly an experienced litigator.’”
- “Denise Drake is singled out for her creativity and wealth of experience in employment litigation.”
- Clients describe Denise Drake as “a tough, tenacious and very smart lawyer. She prepares incredibly well and her work and results show that.” “[She] successfully defeated class certification ... in a proposed wage and hour collective action.”
- “Denise ... [is] an efficient and communicative lawyer who gets on with the job with a minimum of fuss.”

Education

- Iowa State University (B.S., *with honors*, 1985)
 - double major in Psychology and Communications
- Webster University (M.A., *with honors*, 1989)
 - in Human Resources Development
- University of Kansas School of Law (J.D., 1992)
 - CC Stewart Award (awarded for graduating first in class)

Bar Admissions

- Missouri, 1992
- Kansas, 1993
- Nebraska, 2001
- Iowa, 2007
- Illinois, 2022

Court Admissions

- United States Supreme Court
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Eighth Circuit
- U.S. Court of Appeals, Tenth Circuit
- U.S. District Court, Eastern District of Missouri
- U.S. District Court, Western District of Missouri
- U.S. District Court, Northern District of Iowa
- U.S. District Court, Southern District of Iowa
- U.S. District Court, District of Kansas
- U.S. District Court, District of Nebraska

Memberships

- American Bar Association
 - Member of Labor and Employment Section Leadership Council
 - Employer Leadership Liaison to Fair Labor Standards Legislation Committee
 - Employer Leadership Liaison to United States Federal Judicial Clerk Training Committee
 - Employer Leadership Liaison to Immigration Administration Committee
 - Former Management Co-Chair, Labor and Employment Section, 9th, 10th, and 11th National Conference Planning Committees
 - Former Management Co-Chair, Labor and Employment Section,

- Employment Rights and Responsibilities Committee
 - Former Administrative Co-Chair, Labor and Employment Section, Employment Rights and Responsibilities Committee
 - Former Program Co-Chair, Labor and Employment Section, Employment Rights and Responsibilities Committee
 - Former Marketing Co-Chair, Labor and Employment Section, Employment Rights and Responsibilities Committee
 - Former Management Subcommittee Co-Chair, Labor and Employment Section, Employment Rights and Responsibilities Committee, Privacy, Membership, Trial Advocacy and Legislative Developments Subcommittees
- Kansas City Metropolitan Bar Association
 - Executive Board Member
 - Legal Advisor to the Executive Board
 - Former Chair, Labor and Employment Committee
 - Former Chair, Federal Courts Committee
- Association of Workplace Investigators
 - Planning Committee, National Conference

Recognition

- Recognized as a Stellar Performance Lawyer by Thomson Reuters
- Named a "Top 50 Labor & Employment Litigator in United States" by *Benchmark Litigation*
- Ranked in *Chambers USA: America's Leading Lawyers for Business*, Band 1, Labor & Employment, Missouri: Kansas City & Surrounds
- Selected for inclusion in *Best Lawyers in America*® for:
 - Employment Law - Management
 - Recognized as the Litigation - Labor and Employment "Lawyer of the Year"
 - Litigation - Labor and Employment
 - Labor Law - Management
- Honoree, Women Who Mean Business, *Kansas City Business Journal*
- Labor and Employment and General Commercial recognition by *Benchmark Litigation*
- Honoree, Litigation Practitioner Award, *Missouri Lawyers Weekly Women's Justice Awards*
- Named to *Missouri Lawyers Weekly's* The POWER List 'Power 30' for:
 - Employment Law
 - Commercial and Consumer Law
- Named, Fellow of College of Labor and Employment Attorneys
- Selected for inclusion in "Top 250 Female Litigators in America" by *Benchmark Litigation*
- Selected for inclusion in "International Who's Who of Management Labor and Employment Lawyer" by Who's Who Legal
- Selected for inclusion in "Who's Who" in American Law
- Selected for inclusion in *Missouri Super Lawyers* and *Kansas Super Lawyers*
- Named "Litigation Star" and "Labor & Employment Star" by *Benchmark Litigation*
- AV® Peer Review Rating, Martindale-Hubbell
- Selected for inclusion in "Best of Bar" by *Kansas City Business Journal*
- Recipient, Top Lawyers, Corporate Counsel
- Named, "Legal Leader" in *The Daily Record - Kansas City* by Missouri Lawyers Weekly
- Recipient of *Ingram's Magazine* "Forty Under 40" Award
- Recipient of Order of the Coif, University of Kansas School of Law
- Recipient of C.C. Stewart Award, University of Kansas School of Law
- Recipient of Appellate Advocacy Awards, University of Kansas School of Law

- Recipient of Outstanding Contributions Award, Webster University

Matters

Selected Class / Collective / Multi-Plaintiff Actions

- Defeated class certification on behalf of national casino gaming company based on rounding of time clock entries/off-the-clock work, improper sharing of tip pool proceeds, and misclassification of supervisory employees.
- Defeated nationwide FLSA conditional certification of tip credit and misclassification claims on behalf of 15 casinos and casino parent company.
- Defeated nationwide certification and obtained favorable result for national health care provider in FLSA wage & hour collective action alleging off-the-clock work by LPNs.
- Counsel for mortgage company in FLSA wage & hour collective action, alleging misclassification of loan officers. Used offers of judgment to narrow the field of opt-ins, and eventually, to remove the lead plaintiff from the case, which resulted in a highly favorable resolution for client.
- Defeated nationwide certification of off-the-clock claims by hairstylists and obtained favorable resolution for a retail salon with more than 2,000 locations in the first nationwide FLSA wage & hour collective action filed in Missouri.
- Obtained favorable result for salad dressing manufacturer in donning, doffing, rounding, auto-deduction, walking, and waiting time FLSA collective action based on detailed time and distance measurements, admissions by four named plaintiffs during depositions, and declarations obtained from plaintiffs' co-workers.
- Represented national gaming company in nationwide FLSA collective action and Missouri state law class action, alleging failure to properly notify all non-exempt tipped employees of tip credit, unlawful rounding, improper unpaid training (off-the-clock work), and various state law violations. Obtained highly favorable resolution following successful use of post-Campbell offers of judgment, in-depth strategic review of corporate practices, detailed risk analysis, and various other immediate actions focused on minimizing any argument or even slight potential for liability.
- Co-counseled with California attorney following consolidation of national mortgage company FLSA wage & hour collective actions, alleging off-the-clock work by loan processors. Settled on behalf of more than 2,000 employees.
- Represented taxi cab company in lawsuit brought by the Department of Labor, challenging the independent contractor status of the drivers when they were performing alleged non-taxi driver work. Obtained favorable resolution on behalf of company.
- Oversaw FLSA collective action and Kansas state law class action against national pizza crust manufacturer. Defeated class action based on language in the Kansas wage & hour law. Strategically decided not to oppose conditional certification based on likelihood for low opt-in rate. Efficiently obtained favorable result for client with only two employees electing to opt-in.
- Obtained highly favorable resolution in nationwide FLSA collective action on behalf of national cereal and snacks manufacturer, following strategic decisions to immediately fix all potential issues related to liability, voluntarily pay employees, and not fight conditional certification.

Selected Trials / Summary Judgments

- Jury verdict in favor of retail grocery store on assistant bakery manager's claims of retaliation against bakery manager, in spite of bakery manager's decision to support plaintiff during the trial. Summary judgment previously granted on plaintiff's sexual harassment claims. Strategic determinations to allow evidence of harassment to be introduced at trial, as well as to not call certain witnesses once favorable facts were established during cross-examination of plaintiff, contributed to success.
- Defense verdict in race discrimination failure to hire case against national retail clothing store, in spite of evidence assistant store manager used racial epithets.
- Verdict on behalf of retail furniture store in sexual harassment, sex discrimination, and retaliation case, in spite of the death of key defense witness immediately before trial.
- Jury verdict on behalf of bottling company in first Americans with Disabilities Act case tried in Missouri.
- Defense verdict against Chief Information Officer whistleblower in three-arbitrator arbitration on behalf of national health insurance company and CEO accused of violating the False Claims Act, retaliating against CIO pursuant to common law and False Claims Act for reporting violations of the False Claims Act, and retaliating against CIO pursuant to the Missouri Human Rights Act for participating in investigation of subordinate's sex and national origin discrimination claims.
- Obtained summary judgment on behalf of hospital accused of sex discrimination and retaliation in the decision to terminate a resident's residency. Upheld on appeal.
- Represented pork processing plant in one of the first Americans with Disabilities Act cases filed in Nebraska. Obtained summary judgment on production worker's disability claims. One of the first ADA case reviewed by the Eighth Circuit, and summary judgment was upheld.
- Summary judgment granted on behalf of insurance company accused of improperly classifying insurance agents as independent contractors, and age discrimination in the termination of the agent's contract. Upheld on appeal.
- Represented national call center in complicated FMLA and pregnancy discrimination action. Summary judgment granted and upheld on appeal.
- Persuaded female senior executive to voluntarily dismiss sexual harassment, sex discrimination and retaliation case against bank following detailed investigation and strategic use of facts discovered to demonstrate consensual nature of relationship with male senior executive.
- Obtained voluntary dismissal of sexual harassment and retaliation case on behalf of national call center, immediately following Plaintiff's deposition, based on strategic use of Plaintiff's handwriting on romantic notes and journal entries falsely written in support of Plaintiff's claims.
- Race discrimination, sex discrimination, and sexual harassment case brought by not-for-profit employee voluntarily dismissed following detailed investigation and discovery of fake fiancé, as well as numerous other discrepancies in Plaintiff's case.