POLSINELLI

Employment Litigation

Avoiding or minimizing the risk of litigation is a top priority. However, when the inevitability of litigation occurs, the attorneys of Polsinelli's Employment Litigation practice are ready to defend our clients vigorously to achieve their goals. We are constantly preparing for trial but at the same time exploring alternatives that might help our clients altogether avoid or minimize the risk of litigation. We work with our clients to evaluate the impact a dispute may have on their businesses, as well as how various resolutions might affect their culture, operations, and future success.

Our attorneys defend clients before administrative agencies and in trials, mediations, arbitrations, and appeals of lawsuits arising over virtually every conceivable employment-related action including age, religion, gender, pregnancy, race, national origin, disability, harassment, wrongful termination, discrimination, retaliation, FMLA and OSHA violations.

Our Employment Litigation practice group has substantial experience representing management in the administrative charge and litigation phase of cases involving:

- Administrative charges
- The Age Discrimination in Employment Act (ADEA)
- The Americans with Disabilities Act (ADA)
- Class and collective actions
- The Employee Retirement Income Security Act (ERISA)
- The Equal Pay Act (EPA)
- The Fair Labor Standards Act (FLSA)
- Wage and hour
- The Family Medical Leave Act (FMLA)
- Prevailing wage
- Retaliation
- Restrictive covenants
- Sexual and other harassment allegations, including, but not limited to, physical, personal, discriminatory, psychological, third-party, and cyberbullying claims arising under state law.
- Title VII discrimination laws and state or local equivalents
- Whistleblower claims
- Work-related torts
- Wrongful termination

No matter what employment-related disputes our clients may confront, our experienced team of trial attorneys is ready to provide practical guidance to help them achieve the best possible results.

Matters

Jury Trials

- Kansas City Chiefs prevailed on the former director of stadium operations' age discrimination claims following a month-long jury trial. *Cox v. Kansas City Chiefs Football Club*, Circuit Court of Jackson County, Missouri (Eastern District).
- Jury verdict in favor of Cereal Ingredients, after only 30 minutes of deliberating, in OSHA whistleblower retaliation case brought by senior quality assurance technician based on termination of employment after he filed OSHA and NLRB complaints. *Wiedmaier v. Cereal Ingredients, Inc.*, District Court of Leavenworth County, Kansas.
- The jury returned a verdict after 30 minutes of deliberating, following a week-long trial in favor of the hospital against the long-term Chief Executive Officer on claims for breach of an employment agreement, violation of due process, and violation of liberty arising from the termination of the CEO's employment after he criticized the hospital's board and physicians for providing substandard care with no improvement despite CEO's suggestions. *Majors v. McAlester Regional Health Center Authority*, United States District Court for the Eastern District of Oklahoma.
- Jury verdict in favor of health care employer on interventional cardiologist's federal and state (Nebraska) race, color, sex, national origin, ethnicity, and ancestry discrimination claims, thereby avoiding multi-million dollar award of damages, fees, and costs. United States District Court for the District of Nebraska.
- Represented California municipality in a three-week jury trial on claims of national origin discrimination, retaliation, harassment, and failure to prevent harassment and discrimination with a defense verdict for the individual defendant and defense verdict for the City on three of four claims.
- Retail grocery store prevailed with a jury on former assistant bakery manager's claims of retaliation, despite allegations of former bakery manager's sexual harassment of assistant bakery manager and bakery manager's decision to support plaintiff during the trial; summary judgment on harassment claims. United States District Court for the District of Kansas.
- Won defense jury verdict on behalf of hospital, after only 40 minutes of deliberating, on respiratory therapist's FMLA claims; summary judgment granted on other claims. United States District Court for the Eastern District of Tennessee.
- Jury verdict for national Internet security provider on former employee's pregnancy discrimination claims following one week trial.
- Jury verdict on behalf of retail furniture store against sales associate in sexual harassment, sex discrimination, and retaliation case, despite the death of key defense witness immediately before trial. United States District Court for the Western District of Missouri.

Dismissals and Summary Judgments

- Successfully defended a 440-bed hospital against a former resident physician whose residency had been terminated for cause. After a four-day hearing before an Ad Hoc Formal Review Committee, the Committee unanimously found in our favor, concluding that the hospital's decision to terminate the physician's residency was appropriate under the circumstances. His appeal was also rejected on similar grounds, leaving him with no further appellate options.
- Obtained dismissal with prejudice of putative whistleblower claims brought under the Sarbanes-Oxley Act (SOX) by former in-house lawyer.
- Court struck with prejudice nationwide class claims in a putative Fair Labor Standards Act (FLSA) collective action alleging failure to pay overtime.
- Court dismissed all claims against former employees' supervisors and company executives as insufficient to state a claim for relief under a narrow exception in Missouri law authorizing claims against co-workers, individually, for affirmative negligent acts.
- Summary judgment granted against the driver of a national trucking company on federal and state misclassification and unpaid wage claims based on Motor Carrier Exemption to Fair Labor Standards Act; appeal withdrawn by drive before briefing.

- Obtained voluntary dismissal of defamation, tortious interference with business relations, and violation of public policy claims by a former provider for a national hospital organization.
- Summary judgment granted on behalf of insurance company accused of improperly classifying insurance agents as independent contractors and on former insurance agent's claims of age discrimination; upheld on appeal.
- Prevailed on summary judgment in two separate cases in which plaintiffs separately asserted Title VII, FMLA, ADA, and Washington state law claims against the same management team. United States District Court for the Western District of Washington.
- A female senior executive voluntarily dismissed sexual harassment, sex discrimination, and retaliation case against a bank without settlement following a detailed investigation and strategic use of facts discovered to demonstrate the consensual nature of the relationship with a male senior executive.
- Won summary judgment in Kentucky state court against former hospital greeter who alleged disability discrimination, failure to accommodate, and retaliatory discharge.
- A former call center employee voluntarily dismissed a sexual harassment and retaliation case immediately following her deposition based on the strategic use of handwritten notes and falsified journal entries.
- Race discrimination, sex discrimination, and sexual harassment case brought by not-for-profit employees were voluntarily dismissed following a detailed investigation and discovery of a fake fiancé, as well as numerous other discrepancies in plaintiff's case.

Arbitrations

- Obtained summary judgment in American Health Lawyers Association arbitration on behalf of national health care provider regarding multiple breaches of contract claims brought by a former physician pursuant to her former physician's employment agreement with an employer.
- Representation of health care company in a shareholder dispute involving allegations of widespread unlawful employment practices with seven-figure counterclaim judgment for client following two-week arbitration.
- An arbitration panel ruled against the Chief Information Officer whistleblower and in favor of the national health insurance company and CEO accused of violating the False Claims Act, retaliating against the CIO pursuant to common law and False Claims Act, and retaliating against the CIO for participating in an investigation of subordinate's sex and national origin discrimination claims.
- Granted arbitration award in sexual harassment and retaliation case in favor of broadcast satellite service provider.
- Award in favor of symphony and second chair violinist on first chair violinist's claims of sex discrimination, harassment, and retaliation.

Appellate

- Secured an appellate victory in the Connecticut Court of Appeals for Safe Haven Security. The plaintiff, a former employee of Safe Haven Security, filed a lawsuit alleging sexual harassment and constructive discharge under Connecticut law. In the trial court, Safe Haven Security achieved summary judgment on the grounds that, as a matter of law, the alleged harassment was not sufficiently severe or pervasive to maintain the claim. On appeal, the Connecticut Court of Appeals agreed and affirmed summary judgment in favor of Safe Haven Security, rendering its decision based on Polsinelli's briefing alone without the need for oral argument.
- United States Court of Appeals for the Fifth Circuit affirmed construction client's summary judgment dismissal of former employee's claims of disability discrimination, FMLA interference, and FMLA retaliation because her position was eliminated for business necessity in a bona-fide Covid-19 reduction in force while the former employee was on FMLA leave.
- United States Court of Appeals for the Eighth Circuit affirmed summary judgment against a pork processing plant employee who claimed disability discrimination based on failure to accommodate and retaliation following termination of employment.
- United States Court of Appeals for the Fifth Circuit affirmed summary judgment as termination of employee's employment did not violate the Americans with Disabilities Act, despite termination occurring in the hospital upon employee waking from diabetic shock. *Clark v. Champion National Security (cert. denied)*.

- United States Court of Appeals for the Eighth Circuit affirmed summary judgment against the lead plaintiff who asserted race discrimination claims against the manufacturing leadership team and attempted to add more than 20 additional plaintiffs to action.
- United States Court of Appeals for the Tenth Circuit affirmed summary judgment in favor of the parking management company on former employee's race discrimination and retaliation claims.
- Represented employer in an appeal from a $28 million verdict entered against an employer, including an award of $23 million in punitive damages. Successfully argued issues related to the finality of the judgment to the Court of Appeals and Supreme Court of Missouri, then successfully argued to the trial court to set aside the verdict and grant the employer a new trial on all issues.
- Obtained Missouri Court of Appeals decision overturning an adverse Missouri Labor and Industrial Relations Commission decision, in which the commission used the incorrect standard for admitting "business records" under the Missouri Employment Security Law.
- Obtained a first-impression holding from the Iowa Court of Appeals, reversing the district trial court, that the Federal Arbitration Act preempts contrary to Iowa state law regarding the enforceability of mandatory arbitration provisions of employment agreements where the subject agreement affects interstate commerce.

Agency Charges

- For a global pharmaceutical company, obtained dismissal of SOX whistleblower claim filed before Administrative Review Board.
- Successfully represented a private equity firm in a gender pay discrimination case before Maryland Fair Employment Practices Agency.
- Coordinated investigation and responses to over 100 charges of discrimination filed simultaneously with the Equal Employment Opportunity Commission.
- Oversaw charges filed in numerous jurisdictions against national healthcare providers related to COVID-19 vaccination issues and exemptions.
- No probable cause determination on age discrimination and retaliation claims was filed by a former employee of a financial services company.
- Former attorney's claims against law firm dismissed by an agency for lack of sufficient evidence supporting gender discrimination and retaliation.
- Successfully defended national manufacturer before Illinois Department of Human Rights (IDHR) on claims of race and sex discrimination.