SEYFARTH SHAW LLP ATTORNEYS

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# Biography

**Practices & Sectors**

**Labor & Employment**

Wage & Hour Litigation

Complex Discrimination Litigation

Wage & Hour Compliance Reviews and Assessments

Richard Alfred is the Chair of Seyfarth Shaw's National Wage & Hour Litigation Practice Group and of the firm's Boston office Labor & Employment Group and serves on the firm's Labor and Employment Department Leadership Team.

Mr. Alfred's practice is focused on employment litigation, with a particular emphasis on wage and hour collective and class actions, complex litigation, high-stakes discrimination and wrongful termination cases and non-competition matters. He has defended many collective and class actions on behalf of large Fortune 500 companies brought under the Fair Labor Standards Act and state wage and hour laws in jurisdictions throughout the United States. These cases often pose enormous risk to his clients, and Mr. Alfred has been successful through various litigation strategies in defusing and reducing that risk and the potential exposure that such cases initially present.

Mr. Alfred also has extensive experience defending employment discrimination single, multi-plaintiff, and class actions brought under federal and state statutory laws; pattern or practice claims brought by the EEOC; and employment-related breach of contract and tort claims. He regularly represents parties in non-competition, non-solicitation, and other restrictive covenant claims and defends corporations against allegations of competitor-related employee raiding claims. Mr. Alfred counsels businesses on a wide-spectrum of workplace issues, including reductions in force, internal complaints and investigations, executive employment agreements and traditional labor matters.

Mr. Alfred has represented clients in a wide number of industries, including hospitality, financial and professional services, specialized and temporary staffing, retail, pharmaceutical, airline, manufacturing, trucking, home building and technology.

## Education

- J.D., Harvard Law School (1978)
- B.A., Harvard College (1975)
  *magna cum laude*

## Admissions

- Illinois
- Massachusetts
- New York

## Courts

- Supreme Court of the United States
- U.S. Courts of Appeals for the First, Second, Third and Fourth Circuits
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. District Court for the District of Connecticut
- U.S. District Court for the District of Massachusetts


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- U.S. District Court for the Eastern, Southern and Western Districts of New York

## Affiliations

- College of Labor and Employment Lawyers (Election as Fellow, 2000; Chair, First Circuit Credentials Committee)
- American Bar Association (Labor & Employment Law Section, Employee Rights and Responsibilities Committee, Current Management Co-Chair of Class Action and Complex Litigation Subcommittee
- American Employment Law Council (1998-present)
- Hearing Officer, Board of Bar Overseers (1990-1996)
- Massachusetts Bar Association (Labor Law & Employment Section Council, Past Chair)

## Representative Engagements

***Representative Wage & Hour Cases***

- *Mulroy v. NWMCC, D. NJ,* Civil Action No. 2:12-cv-03669 (defense of class action alleging violations of New Jersey prevailing wage laws)
- *The George Washington University adv. Driscoll,* Case No. 1:12-cv-00690 (U.S. District Court, D.D.C.)(collective and class action alleging that certain positions were misclassified as exempt, not paid overtime, and inadequately paid back overtime following reclassification).
- *Firth Rixson Limited, et al. adv. MacPherson, et al.* Case No. 6:12-cv-06162-CJS (U.S. District Court, W.D.N.Y.)(collective and class action alleging that manufacturer failed to pay employees nationwide for all compensable time).
- *National Water Main Cleaning Co., et al. adv. George, et al.,* Case No. 1:10-CV-10289 (U.S. District Court, D. Mass.)(class action under Massachusetts law alleging violations of prevailing wage laws).
- *Endo Pharmaceuticals, Inc. adv. Quinn, et als. v.* Case No. 10-11230-NG (U.S. District Court, D. Mass.) (allegations that pharmaceutical sales representatives are not exempt as administrative or outside sales employees).
- *Caritas Christi, et al., adv. Pruell, et al.*, Case Nos. 09-cv-11722 and 09-cv-11466, (D. Mass.) (defense of hospital system against off-the-clock work claims asserted on behalf of more than 40 categories of non-exempt employees).
- *Boston Medical Center, et al. adv. Manning, et al.*,Case No. 09-cv-11724 and 09-cv-09-11463 (D. Mass.)(defense of hospital against off-the-clock work claims asserted on behalf of more than 40 categories of non-exempt employees).
- *In Re: Staples, Inc. Wage and Hour Employment Practices Litigation*, MDL No. 2025 (D. NJ).
- *Staples, Inc. adv. George*, 08-CV-05746 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Price*, 09-CV-01890 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Zelinsky*, 09-CV-01889 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Morrison*, 09-CV-01970 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Sharma*, 09-CV-01891 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Ciotti*, 09-CV-01919 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Soto*, 09-CV-2482 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Florio*, 09-CV-01157 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Lentz,* 09-CV-03983 (D. NJ) (defense of misclassification and overtime claims involving assistant

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store managers).

- *Staples, Inc. adv. Plath,* 09-CV-02898 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Ross,* 09-CV-89 (D. MT) (defense of misclassification and overtime claims involving assistant store managers).
- *Staples, Inc. adv. Stillman, et al.,* Case No. 07-CV-0849 (D. NJ) (defense of misclassification and overtime claims involving assistant store managers) (pending in 3d. Cir., 09-03871 and 09-04072).
- *Staples, Inc. adv. Yacouby,* Case No. MICV2008-01302 (Middlesex County Superior Court) (defense of misclassification and overtime claims involving assistant store managers).
- *Rosnov v. Molloy*, 460 Mass. 474 (Aug. 31, 2011) (holding that Massachusetts mandatory treble damages law applicable to state wage and hour claims is not retroactive)
- *ZC Management LLC (Canyon Ranch) adv. Wood, et al.*, Civil Action No. 3:07-CV-30076 (D. Mass) (Rule 23 class action removed to federal court alleging violations of the Massachusetts "Tip Statute" and Payment of Wages Law).
- *Fidelity Employer Services Corp. adv. Trezvant, et al.*, 434 F. Supp. 2d 40 (D. Mass. 2006) (minimizing the size of the putative class in a misclassification case brought under the FLSA and state law against a national financial services firm, which resulted in a very small number of opt-in plaintiffs, the decertification of the class, and the dismissal of a pendant state law claim).
- *Robert Half Int'l adv. Opalinski, et al.,* Case No. 10-2069 (FSH)(PS)(U.S. District Court, D.N.J.)(collective action alleging misclassification of staffing managers).
- *Robert Half Int'l adv. O'Donnell, et al.*, 205 F.R.D. 77 (D. Mass. 2008) ("O'Donnell IV") (defeating certification of a Rule 23 class in a case alleging violations of the salary basis test for exempt status where, because of the individualized inquiries required for each plaintiff in determining whether a violation occurred, plaintiffs failed to demonstrate that common questions of fact or law predominated or that a class action was the most efficient way to adjudicate claims).
- *Robert Half Int'l adv. O'Donnell, et al.*, 534 F. Supp. 2d 173 (D. Mass. 2008) ("O'Donnell III") (defeating class certification for the third time at initial stage of a federal lawsuit alleging that a professional staffing agency had violated the salary basis test for its exempt employees).
- *Robert Half Int'l adv. O'Donnell, et al.*, 429 F. Supp. 2d 246 (D. Mass. 2006) ("O'Donnell I")(defeating class certification at the initial stage of a federal lawsuit alleging that a professional staffing agency had misclassified certain employees as exempt).
- *Robert Half Int'l adv. Presser, et al.*, Case No. 6:09-CV-02168-MSS-GJK (M.D. FL (Orlando)) (defense of misclassification case).
- *Kelly Services, Inc., FedEX, Adecco USA, Inc. adv. Richard Tidd, et al.* (D. Mass 2007) (nationwide class action brought by temporary delivery/pickup drivers in which Court allowed only limited conditionally certified class and granted motion to dismiss overtime claims pursuant to the SAFETEA-LU amendments to the Motor Carrier Act).
- *NVR, Inc. adv. Bartnikowski, et al.*, Case No. 07-CV-00768-JAB-PTS (M.D. NC) (defense of overtime pay claims asserted on behalf of real estate Sales and Marketing Representatives under North Carolina timely payment of wages statute).
- *NVR, Inc. adv. Gebhardt, et al.*, Case No. 07-4456 (D. NJ) (defense of overtime pay claims asserted on behalf of real estate Sales and Marketing Representatives under the laws of 8 states, including New Jersey).
- *NVR, Inc. adv. Geers, et al.*, Case No. A0706350 (Ct. Com. Pl. Hamilton County, Ohio) (defense of overtime pay claims asserted on behalf of real estate Sales and Marketing Representatives under Ohio law).
- *NVR, Inc. adv. Graves, et al.*, Case No. GD 07-15569 (Ct. Com. Pl. Allegheny County, PA) (defense of overtime pay claims asserted on behalf of real estate Sales and Marketing Representatives under Pennsylvania law).
- *NVR, Inc. adv. Hart, et al.,* Case No. 07-CV-02744-RWT (D. MD) (defense of overtime pay claims asserted on behalf of real estate Sales and Marketing Representatives under Maryland law).
- *NVR, Inc. adv. Tracy et al.*, Case No. 04-06541 DGL(P) (W.D.N.Y.) (defense of overtime pay claims asserted on behalf of real estate Sales and Marketing Representatives under federal and New York law).
- *Walgreen Eastern Co. adv. Verdone, et al.*, Case No. 06-01613 (Norfolk County Superior Court) (defense of claims brought on behalf of assistant managers for premium pay under the Massachusetts Blue Laws for work performed on Sundays and statutory holidays).
- *Walgreen Eastern Co. adv. Robbins, et al.*, Case No. 07-01550 (Norfolk County Superior Court) (defense of claims brought on behalf of hourly pharmacists for premium pay under the Massachusetts Blue Laws for work performed

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on Sundays and statutory holidays).

- *Hewitt Associates LLC adv. Cartner, et al.*, 09-CV-01293 (M.D. Fla.) (defense of off-the-clock claims involving call center employees).
- *Hewitt Associates LLC adv. Herring, et al.*, Case No. 06-CV-267-GEB-TJB (D. NJ) (defense of overtime pay claims asserted on behalf of benefits analysts under federal law).
- *Hewitt Associates LLC adv. Seng, et al.*, Civil Action No. H-06-3262 (U.S. District Court, Southern District of Texas) (opposing a state-wide collective action in which benefits, human resource, and payroll specialists have alleged that they should have been classified as non-exempt).
- *Hewitt Associates, Inc. adv. Frye, et al.*, Docket No. BC388921 (Cal. Superior Court for LA County) (defense of overtime pay claims under California state law asserting that Benefits Analysts were misclassified as exempt administrative employees).
- *Hewitt Associates, Inc. adv. Toth, et al.,* Docket No. SOM-L-609-08 (NJ Superior Court for Somerset County) (defense of overtime pay claims under New Jersey state law asserting that Benefits Analysts were misclassified as exempt administrative employees).
- *Hewitt Associates, Inc. adv. Wesley, et al.*, Docket No. 08CH-14873 (Circuit Court for Cook County, IL) (defense of overtime pay claims under Illinois state law asserting that Benefits Analysts were misclassified as exempt administrative employees).
- *Safety-Kleen Systems, Inc. adv. Johnson, et al.*, Case No. 06-81300-CIV (S.D., FL) (defense of trucking firm in federal collective action claiming misclassification of employees following amendment of Motor Carrier Act exemption).
- *Whirlpool Corporation and Maytag Corporation adv. Khait, et al.*, Case No. 1:06-CV-0368 (E.D. NY) (defense of home appliance manufacturer for national collective action and “off-the-clock” claims involving service technicians and the Employee Commuting Flexibility Act).
- *AT&T Mobility LLC f/k/a Cingular Wireless LLC adv. Maragh, et al.*, Case No. 07-CV-30210 MAP (D. Mass.) (defense of wireless telecommunications company in nationwide FLSA overtime pay action).

***Representative Other Cases***

- *Circo v. Drew,*80 Mass. App. Ct. 1114, 956 N.E.2d 800 (2011)(appeal of dismissal of public policy wrongful termination claim and defense jury verdict on interference with contract claim affirmed; plaintiff’s petition for further appellate review to Supreme Judicial Court denied)
- *Astra USA, Inc. adv. EEOC*, 94 F.3d 738 (1st Cir. 1996) (litigation over enforceability of charge waiver clauses in settlement agreements in context of pattern or practice sexual harassment claims).
- *New England Business Service, Inc. adv. Perry*, 347 F.3d 343 (1st Cir. 2003) (defense of ERISA claim for health benefits).
- *Massachusetts Health Research Institute, Inc. adv. Ward*, 209 F.3d 29 (1st Cir. 2000) (defense of disability discrimination case).
- *Astra USA, et al. adv. Dorn, et al.*, 975 F. Supp. 388 (D. Mass. 1997) (dismissal of multi-plaintiff sexual harassment claims).
- *Board of Directors of Massachusetts Housing and Finance Agency adv. MacDonough*, 28 Mass.App.Ct. 538 (1990).
- *Delta Air Lines, Inc. adv. Blais*, (D. Mass. 01-11282-MEL) (summary judgment in sex and age discrimination claims).
- *Lehman Bros. adv. Opus Investment Management, Inc.*, Worcester Superior Court (C.A. No. 03-1253A) (defense of aiding and abetting breach of fiduciary duty in claimed “lift-out”).
- *MKS Instruments, Inc. adv. Solomon*, (D. Conn. 3:03-CV-1615 CFD) (defense of breach of contract and age discrimination claims brought by former executive).
- *The MITRE Corporation adv. Campbell*, (D. Mass. 98-11768-RWZ) (defense of Equal Pay Act and sex discrimination claims).
- *The MITRE Corporation adv. Guertin*, Middlesex Superior Court (C.A. No. 97-01202-J) (defense of disability discrimination claims by profoundly deaf physicist).
- *Astra USA, Inc. adv. Williams et al.*, 68 F. Supp. 2d 29 (D. Mass. 1999) (defense of claims alleging a hostile work environment under Title VII of the Civil Rights Act of 1964 on behalf of a major pharmaceutical company).

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## Presentations

- "Wage & Hour Developing Issues: *Christopher v. SmithKline* and the Supreme Court's Consideration of the Application of the Outside Sales Exemption to Pharmaceutical Sales Representatives and Whether USDOL's Amicus Briefs Are Entitled to Deference"; ACI's 12th National Forum on Wage Hour Claims and Class Actions (June 2012).
- "Wal-Mart v. Dukes*:* We Know What It Says, But What Does It Mean?" ABA Section of Labor & Employment Law, Midwinter Meeting, (March 2012)
- "Effective Motion Practice in Wage and Hour Class and Collective Actions": ABA Section of Labor & Employment Law 5th Annual Labor and Employment Law Conference. (November 2-5, 2011)
- "Creative Solutions Dealing with Class and Collective Actions, including Approaching Potential Class Arbitration based on *ATT Mobility v. Concepcion,*" 19th Annual American Employment Law Council (October 19-22, 2011)
- "Effective Motion Practice in Wage and Hour Class and Collective Actions," ABA 5th Annual Labor & Employment Conference (2011)
- "Settlement: Making the Decision, Calculating Damages, and Assessing Settlement Structure and Administration Considerations," ACI's 12th Annual Conference (May 23-24, 2011)
- "Settlement Considerations: Assessing the Benefits, Calculating Damages, and Settlement Structure Administration," ACI's 11th National Forum on Wage Hour Claims and Class Actions (Feb. 2011)
- "The East Coast Hotbeds: Florida, New York, and Massachusetts," ACI's 11th National Forum on Wage Hour Claims and Class Actions (Feb. 2011)
- "Pay Up! What Do FLSA Violations Really Cost?," ABA 4th Annual Section of Labor and Employment Law Conference (Nov. 2010)
- "Dealing with Compensable Time," American Employment Law Council, Eighteenth Annual Conference (Oct. 2010)
- "Survey of Recent Class, Collective, and Hybrid Cases under the FLSA and Similar State Laws" : ABA Section of Labor & Employment Law, Employment Rights and Responsibilities Committee, Midwinter Meeting (2010)
- "Buccaneers of the Electronic Main: The Technology They Use and the Disputes They Spawn,"ABA Section of Labor & Employment Law, Employment Rights and Responsibilities Committee, Midwinter Meeting (2009)
- "Pirates of the Corporation: Lift Outs and Corporate Raids," ABA Section of Labor & Employment Law, Employment Rights and Responsibilities Committee, Midwinter Meeting (2008)
- "Cutting Edge Issues in Labor and Employment Law," ABA Section of Labor & Employment Law, Employee Rights and Responsibilities Committee, Midwinter Meeting (2007)
- "Settlement Strategies in Class, Collective or Pattern and Practice Cases," ABA Section of Labor & Employment Law, Employee Rights and Responsibilities Committee, Midwinter Meeting (2005)
- "Who Are All of These Plaintiffs??? Class Actions: Collective Actions vs. Rule 23 Actions," ABA Section of Labor & Employment Law, Employee Rights and Responsibilities Committee, Midwinter Meeting (2004)
- "Employment Litigation Skills Training," ABA Section of Labor & Employment Law, Management Co-Chair (2003)
- "Supreme Court and Supreme Judicial Court Review," Massachusetts Continuing Legal Education (2004)
- "U.S. Supreme Court and Supreme Judicial Court Year in Review 2002-2003: Employment Law," MCLE Program, Management Co-Chair (2003)
- "More Than Rule 23: Successfully Defending Employment Law Class Actions," ABA Section of Labor & Employment Law, Employment Rights & Responsibilities Committee, Midwinter Meeting (2002)
- "U.S. Supreme Court Year in Review: Employment Law" (Cases Decided in the 2002 Term), Massachusetts Continuing Legal Education (2002)
- "Mitigating Measures After the Sutton Trilogy," ABA Section of Labor & Employment Law, Employee Rights and Responsibilities Committee, Midwinter Meeting (2002)
- "The Vanishing Employee and Accommodating the Disabled Worker," Massachusetts Biotech Council Presentation (1999)

## Publications

- Co-author, "Supreme Court Rejects DOL's Interpretation and Finds Pharmaceutical Sales Representatives Qualify for the Outside Sales Exemption," *Seyfarth Shaw LLP - One Minute Memo* (June 18, 2012)

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- Co-author, “Supreme Court Rejects DOL’s Interpretation and Finds Pharmaceutical Sales Representatives Qualify for the Outside Sales Exemption,” *Seyfarth Shaw LLP - One Minute Memo* (June 18, 2012)
- Co-author, "The Impact of *Dukes* on Wage and Hour Collective Actions," *ABA Section of Labor & Employment Law, Employment Rights and Responsibilities Committee*, Midwinter Meeting (2012)
- Senior Editor, *Wage & Hour Collective and Class Litigation*, ALM Law Journal Press (2012). Definitive treatise on wage and hour litigation.
- Co-author, “Defining the Workday in the Modern Economy,” GP Solo (July/August 2011)
- Co-author, “Continuous Confusion: Defining the Workday in the Modern Economy,” *ABA Journal of Labor & Employment Law* (v. 26 no. 3 Spring 2011)
- Co-author, “*Dukes v. Wal-Mart Stores* Ruling: How This Win For Employers Impacts Wage & Hour Class Actions,” *Westlaw Journal Employment*; Volume 25, Issue 25 (July 12, 2011)
- "New urge to arbitrate" *Boston Business Journal* Op-Ed (2011)
- Co-author, “Avoiding Wage and Hour Traps in Any Economy,” *Bloomberg Law Reports* (June 2010)
- Author, “Mandatory Treble Damages for Wage and Hour Violations Cannot Be Applied Retroactively,” 27 MLW 1711 (June 2009)
- Co-author, “Defending Hybrid FLSA Collective and State Wage and Hour Class Actions,” ABA Section of Labor & Employment Law, Employee Rights and Responsibilities Committee (March 2007)
- “Revitalizing FRCP 68: Can Offers of Judgment Provide Adequate Incentives for Fair, Early Settlement of Fee-Recovery Cases?” Symposium Panelist, 57 Mercer L. Rev. 715 (Spring 2006)
- Co-author, “The ‘No Contact’ Rule: Ex Parte Communications in Employment Litigation,” *The College of Labor & Employment Lawyers Newsletter*, Vol. 4 No. 3 (Summer 2002)
- Co-author of numerous articles on wage & hour, discrimination and other employment issues published in a range of publications, periodicals, and trade journals.

## Legislative and Regulatory Testimony

United States House of Representatives, Committee on Education and the Workforce, Subcommittee on Workforce Protections -- Hearing, "The Fair Labor Standards Act: Is It Meeting the Needs of the Twenty-First Century Workplace?" Witness. Written Testimony (July 14, 2011)

***Accolades***

- *Best Lawyers*, Boston Labor and Employment Lawyer of the Year for 2011 and 2012
- Chambers & Partners, *Chambers USA: America’s Leading Business Lawyers*; ranked Band One, Massachusetts Management Employment Lawyers (2003-2011)
- Recognized as a leading Lawyer for Labor and Employment in Massachusetts in the 2010 *Chambers USA: America’s Leading Business Lawyers*
- The Best Lawyers in America (2006 -2010)
- Recognized in Legal 500, The Clients’ Guide to the U.S. Legal Profession, Labor & Employment Litigation, 2010-2011
- PLC Global Counsel Handbook - Labour and Employee Benefits (2004 – 2005 Highly Recommended, 2005 – 2006 Leading, 2007 – 2008 Leading)
- Fellow, College of Labor and Employment Lawyers (Class of 2000)
- Massachusetts Super Lawyer (2004-2011)

***Community Involvement***

- Historic District Commission, Auburndale, Massachusetts (2007 – present)
- Massachusetts Democratic State Committee, Elected Member (2000 – 2005)
- School Committee, Elected Member, Newton, Massachusetts (1994 – 1996, 1996 – 1998, 1998 – 2000)

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