

Labor & Employment Retail Practice

Practice Overview





Labor & Employment Retail Practice

Retail companies are highly sensitive to economic and competitive market conditions, and the demands placed on these companies in the current environment are significant. Seyfarth Shaw LLP understands the challenges facing retailers posed by the fast paced and seasonal nature of the sales environment, tight profit margins, and focus on brand and market share. By proactively and strategically addressing labor and employment-related issues, retail companies can successfully advance their business goals while mitigating risks.

Seyfarth's attorneys are skilled counselors and experience litigators on the labor and employment law issues that matter most to the retail industry.

Our wealth of experience across the retail industry helps us to counsel our clients so they can proactively avoid all costly issues and safeguard its most valuable assets. When our clients are faced with the inevitable legal battle, however, we are able to bring our significant experience to bear in developing efficient solutions. Seyfarth is perfectly positioned to partner with our retail clients to help them navigate through the current environment with its highly competitive market conditions. As set forth more fully below, our goal is to help our retail clients proactively and strategically address labor and employment-related challenges, so they can successfully grow their business and mitigate risks.

Experience and Resources

Industry-Focused Team

For over 60 years, Seyfarth's Labor and Employment Department has been recognized as one of the "go to" labor and employment firms for business. Our national retail team, with approximately 150 employment attorneys at all levels of experience, provides seamless, consistent representation across all geographic locations, both nationally and internationally.

Seyfarth's attorneys have represented hundreds of retailers in the full range of labor and employment issues. Seyfarth attorneys have deep experience assisting regional, national, and multinational retail companies—including big box retailers, grocery stores, department stores, specialty retailers, convenience stores and small storefront/in-line retailers.

Thought Leadership

Seyfarth has developed technology to help clients mine data from their own operations so that they can take a proactive approach to avoiding lawsuits and government audits. By utilizing this technology along with Seyfarth's vast knowledge bank, research tools, and our model documents and provisions, we are able to quickly and efficiently deliver high-quality results and implement best practices. Over the course of many years, our employment retail attorneys, together with our real estate partners who specialize in retail products, have developed networks and relationships with major players and trade associations in the retail industry around the country—including the Retail Industry Leaders Association, the National Retail Federation, the Food Marketing Institute, the National Grocers Association, and the National Council of Textile Organizations—which enables us to leverage their respective knowledge and experience on behalf of our clients to help them reach their objectives.

We have also created customized industry-specific seminars and articles to advise retail companies about the legal developments that matter most to them,

and we regularly work with industry groups to disseminate relevant work product to their members.

As a result of our extensive representation of retail companies, our thorough understanding of the retail industry, our broad national platform, and the support of our other practice areas (including real estate, litigation, construction, bankruptcy, tax, environmental, corporate, and finance), Seyfarth is uniquely qualified and positioned to provide a seamless "one-stop" national service solution to retail companies in connection with their labor and employment requirements. For these reasons, over the past three years, Chambers USA has provided Seyfarth with national recognition as among the country's best for our practice and service to the retail industry as a result of our multidisciplinary effort across several practice areas of the firm, including, in particular, labor and employment.

Proactive Solutions

We focus on a proactive approach so that we can anticipate and help clients solve problems before they become major litigation or community relations issues. Many of the services we provide retail clients—from employment law audits and employment litigation defense to management training and positive employee relations—are strategically designed to help companies mitigate risks and ensure compliance. In addition, we routinely offer educational programs, including webinars and in-person briefings, that keep our retail clients up to date on the current status of the law.

Seyfarth is perfectly positioned to partner with our retail clients to help them navigate through the current environment with its highly competitive market conditions.

Service Offerings

We have extensive experience in all aspects of our retail clients' labor and employment needs:

Workplace Counseling. Our counseling team analyzes and creates leave of absence procedures to ensure compliance with the FMLA, ADA, pregnancy leave laws, and workers' compensation statutes. Our services include on-site visits to store locations to train legal and human resources staff, taking into account state law differences and operational considerations. We advise large retail employers on reductions in force across different business units, including on issues relating to employee selection and workforce demographics, severance plan design and administration, and compliance with ERISA, the Worker Adjustment and Retraining Notification Act (and state law counterparts), and the Older Workers' Benefit Protection Act. We also handle pay practices assessments and pay equity analyses for large national retailers, an increasing area of concern for retailers given the trend of increased enforcement efforts.

Labor Management Relations. Our traditional labor attorneys represent retail clients on the full range of traditional labor law services. In non-union settings these services include working with retailers to maintain positive employee relations, through providing strategic legal counsel in union corporate campaigns and union election campaigns, assisting with union vulnerability audits, and evaluating the myriad of legal issues that can arise in the organizing context. In addition, our extensive experience with the unions involved in the retail sector has given us the insight to develop innovative solutions to retailers' unique needs for collective bargaining and labor contract administration, multiemployer bargaining and association membership, multilocation bargaining of master labor agreements, neutrality/card-check agreements, grievance arbitration, and interest arbitration of labor contracts. We also regularly advise our clients on how to prepare for, and respond to, picketing, strikes, lockouts, and other economic tactics. When disputes of any kind reach the litigation phase, our attorneys represent retail

employers in all facets of NLRB litigation including representation proceeding, injunctions, and unfair labor practice litigation.

Global Immigration Programs & Workforce

Authorization Compliance. Our team assists retailers with their global immigration programs and workforce authorization compliance, including the full range of work permit and visa application processing and program management. Seyfarth's Immigration Team employs state-of-the-art technologies — including several proprietary, interactive case-management and docketing software programs — to maximize accuracy, minimize redundancy, and provide 24/7 real-time access to information ranging from case records to legal updates. Seyfarth's Workforce Authorization Team (SWATeam) assists clients with the increasingly complex set of regulatory and enforcement challenges involving employment eligibility verification issues, including digital and paper-based Form I-9 compliance, E-Verify, Social Security Administration no-match letters, constructive knowledge, non-discrimination, policy formulation, vendor management, state-level immigration obligations, ICE inspections and enforcement actions, and associated matters.

Management Training. Seyfarth Shaw also offers a suite of customized training and compliance programs through its subsidiary Seyfarth Shaw at Work® (SSAW). SSAW has customized those programs for the retail industry. These customized courses include Business/ Customer Communications, Harassment-Prevention, EEO/Managing Within the Law, Code of Conduct/ Compliance, Workplace Investigations, and many others. SSAW utilizes a dynamic, interactive, and action-focused "no PowerPoint" approach to delivery of its training courses. SSAW's key compliance courses have been reviewed and approved by federal enforcement agencies in the context of nationwide consent decrees and support a powerful forward-looking defense. SSAW also helps retailers craft core value statements that resonate and provides assistance in the employee integration process following an acquisition or merger.

International Labor & Employment. Seyfarth represents multinational retailers with their international or multi-jurisdictional employment law projects, and we have developed handbooks and policies for our clients with overseas facilities that comply with the challenging patchwork of employment laws outside the United States. We have also handled reductions-in-force and outsourcing, and the international assignment or transfer of personnel.

Employment Litigation & Exposure Analysis.

Whether managing a case filed by a single plaintiff or a class of plaintiffs, our industry specialists have already confronted nearly every issue that our retail clients will face in employment litigation. In the discrimination arena, we have handled disparate impact and disparate treatment race, sex, age, and disability class actions as well as agency pattern and practice claims. Similarly, we have the country's leading attorneys with respect to claims arising out of the "Bermuda Triangle" of laws addressing leave issues.

Wage & Hour Litigation and Assessments.

Our wage and hour attorneys advise retail employers in assessments of job classifications, policies, and practices in this highly technical area of the law to reduce the risk of exposure. In the event of litigation, we represent retailers in their defense of collective, class, and individual claims under the Fair Labor Standards Act and state laws in courts throughout the country. These lawsuits involve all types of alleged wage and hour violations such as misclassification of exempt employees (e.g., store managers and assistant managers), off-the-clock claims seeking recovery for alleged unpaid compensable work time (e.g., pre- and post-shift activities), meal and rest break claims, vacation and pay practices claims, as well as a myriad of other claims under state laws.

Access to Facilities, Goods and Services for Customers. Seyfarth attorneys also represent shopping centers, national retailers, specialty retailers, and grocery stores, among others, in matters that arise under Title III of the Americans with Disabilities Act (ADA). Our team not only provides proactive advice,

counseling, and training to help clients to avoid claims arising under the ADA, but also defends retail clients against a wide variety of lawsuits by customers with disabilities and advocacy groups. Our team includes a former official from the U.S. Department of Justice who oversaw the enforcement of Title III of the ADA, enabling us to defend our retail clients against federal and state government investigations with unique insight. Seyfarth attorneys also represent the interests of retailers in rulemakings under the ADA and are involved in the most cutting edge issues, including requirements for accessible self-service equipment and websites.

Benefits & Compensation. Our Employee Benefits and Executive Compensation attorneys work with retailers and counsel them with respect to establishing, maintaining, and even terminating their retirement, health and welfare, and executive compensation plans and programs. Most recently, we have worked with a number of our retail clients who have sought our advice about employee benefits and compensation in connection with a reduction in force.

Trade Secrets & Non-Competes. We work to protect clients' important confidentiality and proprietary information and enforce their own non-solicitation and confidentiality agreements. Our attorneys prepare, review, and/or revise employee restrictive covenant agreements, including non-competition or non-solicitation agreements in all states. We develop appropriate procedures for addressing trade secret theft claims, including effective screening procedures for employees who may be violating your company's non-solicitation, confidentiality, or other policies, as well as those of previous employers. In addition, we help companies implement measures to instruct employees regarding their obligation to protect trade secrets, including departing employees.

Representative Matters

Seyfarth has routinely achieved favorable results for our retail clients facing the full spectrum of labor and employment issues. Following are select recent highlights in a number of areas:

Employment Counseling

- We assisted a nationwide retailer by developing and rolling-out a nationwide leave of absence program designed to comply with the 2009 FMLA regulations, while taking into account state law differences and operational considerations. Seyfarth developed training, forms, and processes for the program, which our client used in over 400 locations.
- We have advised and counseled our retail clients regarding best practices for: meal and rest period compliance, donning/doffing and other potential off-the-clock exposure issues, appropriate exempt status classification of management personnel, leave of absence management and disability accommodation processes, tip pooling and compensation practices, and other challenges faced by multi-unit national retailers.
- In anticipation of the Obama Administration's focus on pay equity issues, and in recognition of heightened OFCCP enforcement of its compensation guidelines and the increase in wage and hour litigation, we have developed a sophisticated pay practices assessment and pay equity analysis product. Several of our clients, including certain national retailers, have asked us to conduct an attorney-client privileged external review of their pay systems, processes, and results.
- We have performed wage and hour audits for our retail clients to review their compliance with federal and state laws. At the conclusion of many of these assessments, we have assisted our clients in implementing change by mapping compensation systems process improvements and assisting in managing change.

Training Engagements

Seyfarth Shaw at Work (SSAW), has partnered with some of the country's largest retailers, and has delivered training programs at Costco, American Girl, J. Jill, Talbots, Bass Shoes, Izod, Calvin Klein, Supercuts, Ulta, Regis, Vidal Sassoon, Rand McNally, Wilson



Sporting Goods, and many others, as well as for such retail product manufacturers as Procter & Gamble, Dial, and Kraft.

Our client testimonials tell the whole story. A Vice President at PVH/Calvin Klein commented:

"We are pleased that we have been free of any serious formal complaints in the area of harassment or discrimination since shortly after the Seyfarth Shaw at Work training. This was in no small part due to SSAW training's impact and lessons. The Seyfarth Shaw at Work programs are now part of our required training."

Employment Litigation

Through our years of representing retail clients in employment litigation, our attorneys are prepared for any issue that may arise. With more than 200 active litigation matters in the retail industry, we are continually developing our litigation strategies to provide the best defense for our clients.

- We won a complete summary judgment for a client in a case involving alleged age discrimination and retaliation under ADEA, employee benefits under ERISA, and ERISA penalties.
- We obtained a complete defense verdict in a jury trial in a case brought by former salesman who alleged defamation after the client discovered that he had submitted inflated travel expenses and warned other employees that such conduct was a terminable offense.
- We represented a retail client in a nationwide class action gender discrimination case alleging denial of promotions.



- We obtained a complete defense verdict in a jury trial against a food retailer in a case alleging religious discrimination based on a schedule that required plaintiff to work on Sundays.
- We obtained favorable settlement for a client after EEOC alleged that a former male employee sexually harassed female employees in violation of Title VII and state law.
- We negotiated an innovative and favorable settlement in this bet-the-company class action against food retailer in one of the largest employment discrimination class action settlements in 2008. Secured preliminary and final approval of the class action settlement in a manner which minimized the client's settlement costs and allowed the company to emerge from a nationwide class action without additional litigation or hampering its human resources and employee relations practices.
- We obtained summary judgment for this nationwide retailer in an off-the-clock claim, reducing a putative 40,000-plaintiff case to a single-plaintiff case. The plaintiff voluntarily dismissed his remaining claims and appealed to the Ninth Circuit. After the appellate briefing closed, the case settled on favorable terms for the employer.
- We obtained a complete defense verdict in a jury trial against a former warehouse employee who alleged race discrimination and retaliation.
- We represented two clients and coordinated two class actions concerning exempt status of convenience store managers.

Employee Benefits

- We assisted a retail apparel company that acquired a nationwide network of stores and outlets. We reviewed all of the employee benefit plan structures for the target company and the store network, and conducted a strategic redesign of the plans to provide comprehensive health care and retirement plan coverage for the newly acquired employees.
- We assisted a retail apparel client and its retirement plan fiduciaries to outsource pension investment management duties to a third-party manager. We helped prepare the request for proposal, evaluated candidates, and assisted with contract negotiations and final asset transition.
- We assisted a *Fortune* 200 manufacturing and retail company with a large-scale reduction-in-force over a period of approximately six months. We were responsible for communicating with human resources and members of the client's executive team about the technical rules and regulations that apply to the taxation of certain benefits and we explained how those benefits were affected by the impending terminations of employment. We also restated and revised the client's severance plan documents and waiver and release agreements.

SeyfarthLean®

We understand that to create value for our clients, success is not defined by us, but rather by them. That is the essence of our SeyfarthLean initiative. SeyfarthLean is the use of structured team-based collaboration, both internally and client facing, to deliver value. To this end, we have pioneered in the law firm environment the use of Lean Six Sigma and other business processes as tools to plan, organize and manage resources, and deliver results to the client. Our aim is to work together with our clients to control legal costs, provide efficient and proactive legal service, and build a partnership to assure that our solutions fit the client's needs. ■

About Seyfarth Shaw

Seyfarth Shaw LLP (“Seyfarth”) was founded in 1945 by three lawyers and has grown to more than 850 lawyers across 13 markets in the U.S. and abroad. We handle issues for our clients in all key areas including labor and employment, litigation, construction, corporate, employee benefits, environmental, government contracts, intellectual property, commercial litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies and various types of funds. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



- | | | |
|------------------|--------------------|-------------------------|
| Atlanta | London | San Francisco |
| Boston | Los Angeles | Shanghai |
| Chicago | Melbourne | Sydney |
| Hong Kong | New York | Washington, D.C. |
| Houston | Sacramento | |

“Seyfarth Shaw” refers to Seyfarth Shaw LLP. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with registered number 556927. Legal services provided by our Australian practice are provided by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia, an Australian partnership. Our Hong Kong office “Seyfarth Shaw,” a registered foreign law firm, is a Hong Kong sole proprietorship and is legally distinct and independent from Seyfarth Shaw LLP, an Illinois limited liability partnership, and its other offices.