

Labor & Employment

Practice Overview





Labor & Employment Department

Since its founding in 1945, Seyfarth Shaw LLP has been recognized as one of the “go to” labor and employment law firms for management. With approximately 400 employment litigators and counselors—including more than 130 in California alone—working in 10 U.S. offices and four international offices, we provide seamless, consistent service for businesses throughout the country.

At Seyfarth, we are continuously looking for better ways to meet our clients’ needs for value and efficiency while providing high quality legal services. With that goal in mind, we created SeyfarthLean®, a distinctive client service delivery model that combines the core principles of Lean Six Sigma with robust technology, project management and process improvement. SeyfarthLean has resulted in a fundamentally different way of collaborating with clients to deliver sophisticated, efficient and cost-effective client and legal services, and has been at the center of a number of awards recognizing our firm’s focus on innovation.

Our ability to match appropriate legal experience and knowledge to client needs and the transactions we handle enables our clients to have a seamless experience that addresses their objectives and expectations.

Added Value for Clients Through a Unique Practice Management Structure

Clients come to us for solutions to their employment problems. To help clients achieve their objectives, we have divided our Labor & Employment Department into 12 team-based national practice groups, each strategically focused on the workplace litigation and counseling subspecialties of particular concern to our clients. Cutting across these practice groups are multiple industry-oriented communities of practice in areas such as financial services, insurance, retail, health care, hospitality, high tech, media, and the public sector. Through this collaborative approach, we drive innovation and excellence across our platform to deliver outstanding results for our clients.

Protecting Employers' Interests When Litigation Arises

Complex Discrimination Litigation

Attorneys from our Complex Discrimination Litigation Practice Group have defended hundreds of complex employment cases, including multi-plaintiff lawsuits, Equal Employment Opportunity Commission pattern or practice cases, and class and collective actions alleging discrimination in employment practices and public accommodation. With our deep substantive experience, we are able to focus immediately on procedural and other strategies to best position the defense of the case to maximize the opportunity for a favorable result. Employers turn to Seyfarth to defend discrimination cases involving race, sex/gender, age, disability, national origin, and religion. Our talented and experienced complex discrimination litigators are widely recognized as leaders among the defense bar. Seyfarth's *Workplace Class Action Litigation Report*, published in January of each year, analyzes the previous year's leading employment-related class action and collective action decisions.

Wage & Hour Litigation

Our wage and hour litigators have litigated hundreds of complex wage and hour cases in state and federal courts, before administrative agencies, and on a multi-jurisdictional basis. In nearly every federal district and circuit court and in courts of almost every state, we have successfully defended a broad array of wage and hour claims. These cases include federal, state law, and hybrid class actions alleging:

- Misclassification of employees as exempt under the "white collar" administrative, executive, and professional (learned and creative) exemptions
- Misclassification of workers as independent contractors
- Failure to pay otherwise exempt employees on a salary basis
- Failure to pay for alleged pre- and post-shift "off-the-clock" activities for nonexempt employees
- Unpaid on-duty meal and rest breaks
- Improper calculation of the regular rate
- Failure to pay minimum wage
- Failure to pay overtime to drivers who qualify for exemption under the Motor Carrier Act and related laws
- Failure to pay overtime to salespeople who are exempt under the Outside Sales Exemption
- Improper tip and "service charge" practices
- Other pay practice irregularities under state statutory and common laws

These cases have included high-stakes litigation seeking unpaid wages and overtime, liquidated and punitive damages, statutory penalties, attorneys' fees, and interest.

With our deep substantive experience, we are able to focus immediately on procedural and other strategies to best position the defense of the case to maximize the opportunity for a favorable result.

ERISA and Employee Benefits Litigation

Our national ERISA and Employee Benefits Litigation Practice Group represents employers, plan sponsors, employee benefit plans, plan administrators, and fiduciaries in all types of benefits litigation. These cases include complex matters involving:

- Alleged breach of fiduciary duty (such as claims regarding 401(k) plan fees, the prudence of employer stock investments, and ESOP transactions)
- Cash balance plan design flaws
- Retiree welfare benefits for collectively bargained and salaried employees
- Multiemployer plan withdrawal liability
- Failure to comply with severance pay and other welfare benefit plans
- Early retirement incentive plan design flaws

- Alleged failures to comply with ERISA reporting and disclosure rules
- ERISA prohibited transactions

Members of our team are skilled litigators who spend a substantial portion of their time defending ERISA claims in courts around the country. Many of our cases involve claims brought on behalf of classes of employees or plan participants. We have successfully opposed class certification, obtained summary judgment, and, when necessary, provided successful trial representation in numerous ERISA cases.

California Labor Code Litigation

Employers depend on our strong presence in California because the state's employment laws differ from federal law in important ways. Simply stated, compliance with



federal law does not necessarily result in compliance with California law. The state's procedural rules make it easier to file a class action to address perceived legal violations, and there are numerous penalty provisions for even minor alleged violations of the law. Additionally, California has a unique unfair competition statute that allows for a representative to file a claim seeking "restitution" of unpaid wages, even without the certification of a formal class. Under either procedure, attorneys' fees are available. All of these factors have led to a significant increase in wage hour lawsuits in California. Our dominant California presence gives us a litigation advantage, not only with respect to defending California Labor Code claims, but also because we can systematically leverage our California litigation experience toward the defense of labor and employment class actions, wherever located.

Single Plaintiff Litigation

Members of the firm's Single Plaintiff Employment Litigation Practice Group represent companies of all sizes and disciplines before administrative agencies, judges, and juries. We defend every type of employment-related matter, including federal discrimination claims brought under Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866 and 1870, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act Amendments Act of 2008, and the Family and Medical Leave Act of 1993, similar claims brought under state anti-discrimination statutes, claims under the Sarbanes-Oxley Act of 2002, actions involving state law contract and tort claims, whistle-blower claims under state and federal law, and actions involving various other local, state, and federal statutes.

We offer predictable, cost-effective solutions to the defense of single plaintiff cases to our clients, including our innovative SeyfarthLean process for flat fee pricing of a single plaintiff case through summary judgment. Single plaintiff employment litigation still remains a significant threat to employers of all sizes. We provide our clients who operate in multiple jurisdictions with efficient, seamless, and consistent representation.

Labor Relations Litigation

Seyfarth provides aggressive representation in all aspects of labor relations law litigation. Our attorneys have tried and argued cases at all court levels and before the National Labor Relations Board, the National Mediation Board, state labor boards, and labor arbitrators. We have extensive knowledge and experience in litigating issues involving crucial areas such as:

- Unfair labor practice charges
- Grievance arbitrations including contract interpretation, discipline, and interest disputes
- Union election and bargaining unit-related matters
- Specialized types of injunction proceedings
- Federal preemption of state regulation
- Litigation under Section 301 of the Labor Management Relations Act
- The Racketeer Influenced and Corrupt Organizations Act
- The relationship between the National Labor Relations Act, the Railway Labor Act, and other laws, such as antitrust and bankruptcy law
- Successorship and other issues resulting from transactions or business restructuring

Proactive Solutions for Employers

Affirmative Action/Diversity

Our OFCCP, Affirmative Action & Diversity Consulting Team helps employers not only to manage the complexities inherent to affirmative action in the workplace, but also to understand what businesses need to establish and maintain compliance with the law. Our team is dedicated to providing effective counsel regarding:

- Affirmative action program and plan development
- Office of Federal Contract Compliance Programs (OFCCP) compliance evaluations
- Legally defensible diversity assessments, metrics, and reporting
- Best practices advice in these areas

Our team is well-versed in the intricacies of the complex data analysis required by the Department of Labor's OFCCP, as well as the tools used to leverage these compliance materials to achieve diversity objectives. We have a broad knowledge of trends, OFCCP departments, and relevant procedures that helps ensure efficient and effective counsel to employers in these matters.

Labor Management Relations

Our labor management relations attorneys focus on all aspects of the union-management relationship. We counsel on the entire spectrum of labor-related issues for both unionized and non-union employers that can arise, including:

- Preventive services
- Anti-corporate campaigns
- Union organizing campaigns and elections
- Collective bargaining negotiations
- Grievance handling and contract administration

Our attorneys also work with clients involved in corporate acquisitions and mergers, consolidations, joint ventures, workforce reductions, and other forms of business restructuring to develop strategies aimed at reducing deal risk and enhancing successful operations thereafter.

Workplace Counseling & Solutions

Seyfarth's Workplace Counseling & Solutions Practice Group has a long history of providing clients with practical advice and proactive strategies designed to both ensure compliance and manage litigation risk. We have best practice teams that provide proactive counseling to our clients in areas such as absence management and reductions-in-force. Our lawyers have broad experience reviewing and drafting all forms of:

- Employment policies and procedures
- Handbooks, applications, and performance evaluation forms

Employers operating in today's global economy rely on Seyfarth's labor and employment attorneys to assist with their international needs.

- Offer letters and employment contracts
- All other documents that have an impact on the employment relationship

We regularly design and present training programs tailored to individual client needs and have developed workplace assessments to assist employers in complying with various employment laws and to minimize their exposure to class action litigation. In addition, we conduct multi-state surveys concerning various aspects of employment law impacted by state law, providing employers with multi-state operations a highly valuable resource with insightful analysis.

International Labor & Employment Law

Employers operating in today's global economy rely on Seyfarth's international labor and employment attorneys to assist with their international needs. Our attorneys have deep experience dealing with large multi-jurisdictional employment law projects that typically have a strategic, commercial, or compliance purpose. These include:

- Global compliance projects
- Global compensation plan implementation and modification
- HR due diligence in international transactions
- Workforce integration and restructures, including outsourcings
- The development, review, and implementation of contractual employment documents

We counsel on the entire spectrum of labor-related issues for both unionized and non-union employers.

Business Immigration

Our Business Immigration Group has a broad base of practice experience and deep bench strength, and our services are enhanced by aggressive use of proprietary case management, document assembly, and case delivery technologies. We help clients with all immigration-related issues that employers face, including matters involving:

- Global immigration (both U.S. and foreign country)
- Immigration policy consulting and development
- Workforce authorization issues, including I-9 audits
- Program implementation and transition, including management of high-volume accounts
- Immigration training

Our business immigration client teams have established processes to achieve superior levels of accuracy in document production and delivery of a consistent and accurate work product across our platform.

Employment Law Training

Seyfarth Shaw at Work® is the firm's training subsidiary and provides training on a broad range of topics affecting companies today. Courses cover all aspects of the employment relationship, as well as corporate ethics and compliance issues. The training sessions are designed to help build and support our clients' available affirmative, reasonable care, and good faith defenses, all the while creating a safer, productive, and more respectful work environment for all employees. Seyfarth Shaw at Work has a proven record of helping companies establish defenses, with comprehensive courses that have been utilized in nationwide consent decrees enabling clients to avoid millions of dollars in liability exposure. ■

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.



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