



Employment & Labor



The Parker Poe Employment & Labor practice group consists of 19 accomplished lawyers strategically located throughout the firm's geographic footprint, who have experience representing both foreign and domestic companies of all sizes on virtually every type of employment and labor matter.

With the size and experience level of competing boutique firms, Parker Poe's Employment & Labor practice also has the additional ability to call on attorneys from dozens of practice groups and industry teams, including employee benefits, tax, immigration, and legislative representation. Our seamless service enables clients to call on one firm for efficient, cost-effective counsel.

Now more than ever, employee relations strategies need to be purposeful, compliant, and defensible. Surveys of corporate risk managers identify employment and employee benefits issues among their top concerns for financial exposure.

In addition to monetary risks, failure to prevent and monitor potential employment problems can distract management, waste time, and limit resources. Parker Poe works to understand your business, your legal issues, and how best to protect the reputation, business practices, and performance of you, your department, and your company.

Employers also face increasingly aggressive efforts by labor unions to organize employees. Companies need to respond to incipient union activity and protect their union-free status through deliberate and coordinated steps and regular union avoidance training.

We counsel employers as they design, manage, and carry out HR initiatives in a business world of increasing pressures and regulations. In our changing legislative and economic climate, these programs have ranged from HR compliance audits to layoffs, health care reform to COBRA coverage, and management training to multi-state leave policies.

Increasingly, employment decisions do not stand alone. They are critical factors in top-line strategies to expand or focus products and services, as well as bottom-line plans to shift production and people. Protecting trade secrets, completing transactions, and pursuing legislative support require a combination of experienced and effective legal counsel.

As a member of the Employment Law Alliance, Parker Poe can bring to bear the resources of top labor and employment attorneys in all 50 states and more than 100 countries around the globe.

REPRESENTATIVE EXPERIENCE

Employment Experience



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- **Employment Defense Litigation** – We have substantial experience representing clients in an array of litigation matters in state and federal courts in North Carolina and South Carolina as well as courts across the United States. We defend employers against claims involving Title VII, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Sarbanes-Oxley Act, wrongful discharge, retaliation, wage and hour matters, tort claims, and other employment-related issues. Parker Poe is approved panel counsel for many of the major Employment Practices Liability Insurance (EPLI) carriers.
- **Class & Collective Action Litigation** – We have the experience and resources to handle class action, collective action, and multi-district litigation, and to manage the discovery databases typically associated with such large, complex litigation.
- **Trial Experience** – We have the experience, state-of-the-art technology, and resources to try employment and labor cases in virtually any forum, if necessary. Possessing this ability often serves as a deterrent to litigation or helps to facilitate an early resolution of a lawsuit before our clients incur the substantial costs and administrative headaches associated with litigation. When appropriate, we also assist clients with mediation, arbitration, and other alternative dispute resolution options.
- **Regulatory & Administrative Investigations and Compliance** – We routinely practice before a variety of federal and state agencies that administer employment laws and regulations, including the Equal Employment Opportunity Commission (EEOC) and equivalent state fair employment practices agencies, the Office of Federal Contract Compliance Programs, and federal and state departments of labor. We also provide employers with investigative, auditing, and response services aimed at achieving full legal compliance, with minimal costs and business disruptions.
- **Wage & Hour** – We provide employers with strategies in wage and hour matters, with a focus on the legal requirements of the FLSA, state-specific wage and hour issues, overtime pay exemptions, and legal control of overtime. We also represent employers in enforcement proceedings initiated by federal and state departments of labor and litigation involving both single plaintiffs and collective actions.
- **ADA and FMLA** – Our attorneys work closely with employers in navigating the intricacies of the ADA and the FMLA and the relevant regulatory framework. We provide proactive strategies for employers to make prudent business decisions regarding sick and injured employees and to minimize the often inevitable legal exposure.
- **OSHA Compliance** – Employers face increasingly aggressive enforcement actions by federal and state workplace health and safety compliance agencies, including burdensome new record keeping



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and injury recording requirements. We work with employers and outside consultants to identify areas of potential noncompliance in advance of any enforcement action. If an employer is the subject of an OSHA investigation, we provide complete representation during the inspection and through the negotiations or appeal of any resulting citations.

- **Human Resources Counseling and Policies** – We assist employers in drafting, implementing, modifying, and enforcing personnel policies and employee relations concepts. We also provide strategic advice and guidance on specific personnel actions, such as hiring, evaluation, discipline, and termination.
- **Management Training** – We work closely with in-house counsel, company management, and human resources professionals to develop and implement training programs for supervisory personnel. Training programs are customized to meet clients' specialized needs and may include such topics as EEO and nondiscrimination; sexual harassment; dealing with sick and injured employees; effective human resources practices, including hiring, evaluation, discipline, and discharge; wage and hour issues; workplace violence; and emerging trends in employment law.
- **ERISA Litigation** – Working collaboratively with our employee benefits attorneys, we handle a variety of ERISA litigation matters for our clients, including defending claims for denial of medical, disability, life, severance and pension benefits, ERISA preemption, subrogation issues, interpleader actions, and breach of fiduciary duty claims.
- **Mergers, Acquisitions & Other Business Transactions** – In partnership with our transactional attorneys, we are actively involved in due diligence on a variety of merger, acquisition and joint venture transactions. In connection with such transactions, we negotiate and draft employment agreements, executive compensation plans, retention plans, consulting agreements, severance documents, and parachute agreements. We also manage compliance with the WARN Act and other legal issues triggered by such transactions.
- **Employment & Noncompetition Agreements, Unfair Trade Practices & Protection of Trade Secrets** – We counsel and assist employers in drafting, implementing, modifying, and enforcing employment contracts and related agreements designed to protect competitive interests, trade secrets, and other confidential information. We also prosecute and defend restrictive covenants, employee theft, breach of fiduciary duty, unfair trade practices, and trade secret misappropriation lawsuits.
- **Immigration** – Our immigration attorneys counsel multinational, foreign, and domestic companies based throughout the world in industry sectors that include manufacturing, telecommunications, software development, e-commerce, and financial services. We are especially experienced in



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handling immigration issues for researchers, scientists, engineers, computer specialists, and executives who have particular needs and who warrant creative and aggressive immigration strategies.

Labor Experience

- **Union-Free Workplace Training & Policies** – We assist employers with proactive efforts to maintain and defend their status as union-free workplaces. This includes structuring proper interviewing and hiring practices to avoid salting and other potentially invasive union efforts, training executives and managers on the signs of union organizing activities, strategies for making their companies less attractive to union organizers, and “TIPS” on union avoidance training for front-line managers dealing with employees who may be considering supporting organizing efforts. We review and revise employee handbook and other policies to make certain that the company’s position on unions is clearly and fairly stated and that appropriate restrictions on outside solicitations are in place.
- **Arbitration of Grievances** – For employers that are already unionized, we provide representation in grievance procedures, including investigation, attempts at resolution, and if necessary arbitration of union grievances.
- **Collective Bargaining Agreement Negotiations** – We regularly advise employers faced with initial negotiations or renegotiation of expiring CBAs. We propose creative solutions to bargaining issues with unions and help position unionized employers for maximum flexibility in dealing with the bargaining representatives. We also assist employers in determining whether new workplace policies, procedures, and benefits require bargaining with the labor representative prior to implementation.
- **Representation Before the National Labor Relations Board** – Due to recent personnel changes, the NLRB has become increasingly union-friendly. We represent employers involved in NLRB administrative procedures, including defense of unfair labor practice charges against employers, and prosecution of ULP charges against unions that violate the NLRA.
- **Counseling Non-Unionized Employers on Labor Issues** – An employer does not have to be unionized in order to encounter legal issues under the National Labor Relations Act. We make certain that our employer clients are aware of labor issues involved with non-unionized workplaces, such as avoiding inadvertent collective bargaining, recognizing and handling concerted activity in non-organized workplaces, and problems involved with “house” unions and other areas of possible non-compliance under the NLRA.

A sample of our representative work includes:



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Executive Compensation Claim

Obtained summary judgment on each of four claims in a case involving an eight-figure bonus compensation dispute by a former senior executive of a Fortune 500 company. The potential exposure was approximately \$40 million due to liquidated damages, interest, and attorneys' fees under the North Carolina Wage and Hour Act. The case involved extensive electronic discovery of archived data and a complex fact pattern that spanned a decade of events and compensation plans.

Multi-Country Claims Follow Acquisition

Retained to investigate the conduct of three executives and defend multiple actions arising from the alleged wrongful terminations of these managers following the acquisition of their international company. After an investigation uncovered facts exposing all three executives to significant liability, two of the matters were resolved on favorable terms without trial and the third was successfully arbitrated in Sweden.

Complex OFCCP Audit

Resolved a systemic discrimination claim alleged by the Department of Labor's Office of Federal Contract Compliance Programs, claiming discrimination against several thousand applicants by a large regional employer due to a biased aptitude test. OFCCP originally estimated damages at over \$20 million. We resolved the claim for a small fraction of the monetary demand, and as an alternative, devised a creative mechanism for offering jobs over a multi-year period to qualified minority applicants.

Overtime Collective Action

Settled a potentially dangerous collective action claim for unpaid overtime filed on behalf of more than 100 current and former employees of an area manufacturer. The claim alleged that the company improperly changed its workweek under the Fair Labor Standards Act, resulting in large claims for overtime pay. The plaintiffs were represented by a national firm specializing in these suits. We demonstrated that the method used to change the workweek was legally defensible and resolved the case for a small fraction of the original demand.

Disability (AIDS) Discrimination Claim

Represented a client in a multiple plaintiff Americans with Disabilities Act claim for discrimination brought by former employees with HIV/AIDS. We favorably resolved a very contentious claim that involved joint employment issues between our client and two separate employee leasing/temporary staffing companies.

Section 1981 Race Discrimination Suit

Obtained summary judgment and dismissal of all claims asserted by a former employee who alleged



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discrimination against a national retail client in connection with denial of promotions, transfer, and termination.

Large National Employer With Tens of Thousands of Employees

Have regularly conducted 50 state reviews for large national employer on a variety of compliance issues ranging from wage and hour compliance to wage garnishment to state and local leave law requirements. The substantive information developed by these reviews was prepared for use by as both resource materials and as components of online tools for client to manage HR compliance.

U.S. Subsidiary in Class Action Case

Represented the employer in an action against a former executive for breach of fiduciary duty and misuse of corporate assets. This lawsuit led to the recovery of funds by the employer and the voiding of a significant severance package for the executive. In this matter we also successfully defended counterclaims by the executive for six-figure severance benefits.

Publicly Traded Company Facing Public Embarrassment

Within seven months of the filing date, following removal to federal court of a state court action for sexual harassment, intentional infliction of emotional distress, and wrongful discharge, Parker Poe obtained a dismissal of the complaint for failure to state a claim.

Little Time to Lose

Defeated the motion for temporary restraining order after receiving less than a single day's notice of a complaint for misappropriation of trade secrets and a hearing on a motion for temporary restraining order. Within four months after the complaint was filed, Parker Poe convinced the plaintiff to dismiss the lawsuit.

Unfair Labor Practice Charges Follow Unionization Efforts

Obtained successful resolution of multiple unfair labor practice charges following active unionization efforts. After several weeks of hearings before administrative law judges and two appearances before the Court of Appeals for the Fourth Circuit, we resolved the claims for a small fraction of the initial exposure and the client has remained union free.