

Employment Litigation

Miller Canfield's exceptional employment litigators are ranked alongside the nation's most well-known major law firms and boutique employment firms. Our attorneys have litigated some of the largest and most complex employment-related cases in Michigan and elsewhere. With lawyers licensed in numerous states and admitted in more than 30 federal courts, we have the capability to litigate cases in state and federal courts or arbitrations throughout the U.S. and Canada.

Our employment litigation experience includes:

- Wage-and-hour disputes, including failure to pay overtime or the minimum wage, under the Fair Labor Standards Act (FLSA) and the Michigan Wage and Benefits Act
- Equal Employment Opportunity Commission (EEOC) harassment, retaliation, discrimination and civil rights claims
- Family and Medical Leave Act (FMLA) and Americans With Disabilities Act (ADA) claims, including claims of interference, discrimination and retaliation, and failure to accommodate (e.g., denial of leave of absence, discipline for attendance violations, refusal to provide technical aids or devices, and failure to honor work restrictions)
- Wrongful discharge, breach of employment contract, whistleblower, and employment-related tort claims (e.g., defamation, intentional infliction of emotional distress, interference with contract or business relations)
- ERISA denial of benefits, discrimination and breach of fiduciary duty claims
- Non-compete, non-solicitation and confidentiality non-disclosure disputes
- Employment-related arbitrations
- Administrative proceedings before federal agencies, such as the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), the Department of Labor and the Department of Homeland Security (Immigration and Customs Enforcement) and their state equivalents

Miller Canfield's employment litigation attorneys are ranked among the best in the nation by **Chambers USA** and **U.S. News & World Report's "Best Law Firms in America."**

Representative Matters

Wage and Hour

- Defended a manufacturer in a wage and hour collective action case alleging that employees were forced to report to work early and stay late without compensation. The lawsuit also alleged that bonuses were unlawfully excluded from the calculation of overtime. We convinced the judge to deny the plaintiff's request for class certification and ultimately achieved a favorable settlement for the company for a fraction of the initial request.
- Represented public employer in putative class action lawsuit alleging that female nurse practitioners were paid less than male physicians assistants.
- Successfully overturned several decisions holding that a collectively bargained termination incentive plan which resulted in reductions in pay (\$250 per pay period per employee) violated the Michigan Payment of Wages and

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Fringe Benefits Act.

- Defended FLSA collective action against call center alleging that employees were owed money for off-the-clock work (computer start-up time, unpaid lunch breaks) as well as allegations that there was a miscalculation in the regular rate of pay. Scope of settlement class was approximately one quarter of the potential class alleged.
- Defended nationwide collective action and Colorado class action brought by former contractors of entertainment company alleging that actors were misclassified as independent contractors. Dispute was transferred from Colorado to Michigan, where we were able to settle with a class that only involved Colorado employees, reducing the potential scope of the class from over a thousand individuals to less than 100.
- Defended collective action against restaurant franchise alleging wage and hour violations related to tip sharing. Case settled at the single-store level, which was significantly less than the multistore class sought by plaintiffs.
- Successfully defended a nationwide collective and Wisconsin state class action alleging various forms of "time shaving" including failure to pay for pre- and post-shift donning/doffing, along with other allegedly compensable time. Also alleged clock time errors and failure to include non-discretionary bonuses in overtime payments. We convinced the district court to deny conditional certification of the collective under FLSA and the case quickly settled on an individual basis for a nominal amount.
- Successfully represented a public utility company in a wage and hour collective action brought by over 300 employees alleging entitlement to overtime. The federal district court dismissed plaintiffs' claims. They appealed and we successfully defended the dismissal before the Sixth Circuit Court of Appeals.

Discrimination (Age/Race/Sex/Religion)

- Defended a major retailer in a class action involving sales associates alleging age discrimination arising out of a nationwide reorganization. The Eastern District of Michigan dismissed the lawsuit, avoiding potential damages claims exceeding \$16 million.
- Represented a local school district against a union and hundreds of former employees in an age discrimination class action lawsuit. We obtained summary disposition at the state court level, then successfully requested the dismissal of a parallel class action filed in federal court.
- Successfully defended a major wholesale supplier of wood products against an age discrimination charge brought in the U.S. District Court. Following the close of evidence after a 4-week trial, the trial court granted defendant's motion for a directed verdict.
- Defended a clothing retail chain in a purported class action involving race discrimination claims. The case settled on favorable terms after the court declined to certify a class.
- Successfully defended food producer against four race and national origin discrimination charges filed with the Michigan Department of Civil Rights alleging that black and non-Polish employees were given harder, less desirable work assignments and disciplined more harshly than white Polish employees.
- On behalf of a major utility company, obtained summary judgment, affirmed on appeal, in multiplaintiff case alleging race discrimination and retaliation.

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- Obtained no cause jury verdict on behalf of a manufacturer when plaintiff, the only female in the plant, alleged that the poor performance for which she was terminated was caused by male employees sabotaging her work.
- Successfully defended a retailer against a lawsuit alleging sexual harassment and violation of the Michigan Whistleblowers' Protection Act. The court granted summary judgment as to all claims, avoiding a settlement demand of \$250,000.
- Obtained summary judgment for a Jewish newspaper in a case brought by a non-Jewish sales manager who claimed discrimination and retaliation. Ruling was upheld on appeal.

Family and Medical Leave Act (FMLA)/Americans with Disabilities Act (ADA)

- Represented a major national retailer in an FMLA dispute involving a manager who was terminated after exceeding her approved FMLA leave for a year without providing additional medical support. The Court granted summary judgment, avoiding potential back pay exposure and additional liabilities exceeding \$100,000.
- Prevailed on summary judgment and in the 6th Circuit Court of Appeals, which held that plaintiff was not protected by the FMLA even though he had been given FMLA forms, where the employer had fewer than 50 employees and plaintiff needed to take medical leave regardless of whether it was covered by the FMLA.
- Successfully defended hospital against FMLA claim brought by nurse who wanted to work a reduced schedule for a variety of personal and medical reasons.
- On behalf of a major public hospital system, counseled the employer through the accommodation process and then successfully vacated a temporary restraining order, defeated a motion for a preliminary injunction, and obtained dismissal of the lawsuit where a nurse sought an accommodation that would require that she avoid all exposure to radiation.
- Obtained summary judgment on case brought by medical student who had been dismissed from the medical school but claimed that he had ADHD and dyslexia and therefore could not complete required curriculum in the usual manner.

Wrongful Discharge/Breach of Employment Contract

- Obtained successful result in first private university tenure case, establishing that tenure does not grant any right to continued employment or a removal procedure beyond that provided by contract.
- Successfully defended summary judgment on appeal to the Michigan Court of Appeals in case brought by a school administrator who claimed that she was terminated in violation of a just cause employment contract.
- Obtained no cause jury verdict in case of breach of fiduciary duty brought by neurosurgeon against a medical practice when she was removed from the practice after being terminated from her university medical school position for fraudulent use of the corporate credit card.

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ERISA Denial of Benefits

- Successfully defended an insurance company against a lawsuit by a beneficiary seeking \$1.6 million in accidental death benefits under an ERISA-covered plan. At issue was whether a policy exclusion, which stated that benefits were not payable for losses caused as a result of a private plane crash, applied. Plaintiff argued that it did not apply because the exclusion was never disclosed. The court rejected these arguments, initially dismissed plaintiff's breach of fiduciary duty claim and later granted judgment on the administrative record in defendants' favor.
- Defended employer sued by an employee who had been denied benefits by the company's benefit plan administrator. The action asserting ERISA claims under §§102(a), 502(a)(1)(B), and 502(a)(3). We drafted a motion to dismiss claims based on substantive ERISA arguments and standing. Upon receipt of our draft motion, plaintiff voluntarily dismissed the case.
- Defended Fortune 500 companies in lawsuits arising out of denials of claims for ERISA-covered disability, severance and pension benefits.
- Obtained dismissal of action brought by attorney against his former law firm alleging that the law firm had miscalculated deferred retirement benefits, significantly underpaying him and other former attorneys, and that the retirement plan was underfunded.

Arbitrations

- Successfully defended a grievance arbitration against a major public utility company after an employee in the bargaining unit was terminated. The arbitrator ruled that the employer had just cause to terminate the employee despite his 37 years of service with the company and denied the grievance, relieving the company from six-figure liability.
- Successfully defended a grievance arbitration for a public road commission after an employee in the bargaining unit was terminated. We argued that the demand for arbitration was not timely and convinced the arbitrator to hold an evidentiary hearing on timeliness only. After that hearing, the arbitrator issued an award agreeing with the employer, finding that the arbitration demand was not timely, and denying the grievance.
- Successfully defended an arbitration involving four separate union grievances arguing that a public body did not have the right to compel the employees to work on weekends or to discipline employees who refused to work. The arbitrator found in the employer's favor and denied each grievance, preserving the employer's ability to meet its public service obligations.