

Employment and Labor

Miller Canfield is widely respected as one of the best employment and labor practices in the world. *Best Lawyers* includes Miller Canfield among the nation's best firms for management-side employment and labor law and labor and employment litigation. *Chambers USA* ranks Miller Canfield among the top employment firms in Michigan, saying the firm "exhibits considerable strength in FMLA and ERISA benefits litigation and counseling" and is "skilled at taking on collective bargaining mandates and other union-related matters."

In addition to clients and outside ratings publications, fellow attorneys recognize the excellence of our employment and labor practice. Miller Canfield is the designated Michigan and Polish law firm in the **Employment Law Alliance (ELA)**, a network of the best labor and employment firms in the world. We write and update the *Michigan Employment Law Handbook* for the Michigan Chamber of Commerce. We also edit and provide substantial content for *Michigan Public Employment and Labor Relations Law* and contributed the Michigan and Poland chapters to the ELA's *Global Employer Handbook*, as well as contributing chapters to publications for the American Bar Association and the Institute of Continuing Legal Education.

For companies with Canadian facilities and employees, we also have a dedicated **Canadian employment law team**. These attorneys have represented some of the largest companies in the world in front of Canadian national and Ontario provincial labor courts.

The strength of our practice is the depth and breadth of experience among our attorneys, many of whom are recognized by their peers as leaders in the employment and labor field by organizations such as *Best Lawyers in America* and *Super Lawyers*. Seven of our attorneys are Fellows in the College of Labor and Employment Law, and one is also a Fellow in the American College of Trial Attorneys, which recognizes attorneys with extensive trial experience at the highest levels.

Representative Matters

Americans with Disabilities Act (ADA)

- 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.

Breach of Contract/Breach of Fiduciary Duty

- 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.

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- 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.

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.
- 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.

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.

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- 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.

Family and Medical Leave Act (FMLA)

- 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.

Governmental/Public Litigation

- Represented a city which was sued by its retiree association after the city's former emergency manager eliminated retiree health care benefits as a cost-saving measure during the financial crisis. We handled the litigation and negotiated an innovative settlement agreement which would require the city to terminate its overfunded defined benefit plan with current assets valued around \$500 million, reestablish a new defined benefit plan (which will assume all of the pension liabilities of the terminated defined benefit plan plus a substantial cushion of assets), and establish a voluntary employees' beneficiary association (which will receive the remaining excess assets to fund certain retiree health benefits). We helped the city receive IRS approval for this groundbreaking arrangement, which will enable the city to utilize approximately \$100-\$150 million of excess funding from its pension system to maintain pension benefits without reduction and restore city-funded retiree health, dental, and vision benefits for eligible retirees.
- Defended two public bodies against litigation filed by a job applicant whose conditional job offer was rescinded after she tested positive for THC. The plaintiff had advised our client that she possessed a valid medical marijuana card, and she sued alleging that Michigan's medical marijuana statute protected her from the adverse action because the statute protects medical marijuana cardholders from penalty by public agencies. In a matter of first impression in the state of Michigan, the trial court dismissed the lawsuit for failure to state a claim upon which relief could be granted. The plaintiff appealed. A three-judge panel in the Court of Appeals unanimously affirmed the dismissal in a published decision, explaining that the medical marijuana statute does not prohibit public employers

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from enforcing zero-tolerance drug policies, including as they related to medical marijuana.

- Defended a major university in a contentious matter brought by two faculty members who filed a joint complaint for violations of the Michigan Elliott-Larsen Civil Rights Act based on race discrimination, gender discrimination, marital status discrimination, race hostile work environment, and retaliation; and violations of the Persons with Disabilities Civil Rights Act for discriminatory hostile treatment and retaliation. Case involved 33 full-day depositions and direct examination of 25 witnesses. Jury voted against plaintiffs on all 10 claims.
- Successfully defended a major university in a lawsuit brought by a former male student who was found to have violated the university's student policy on sexual misconduct. The plaintiff alleged that the university discriminated against him because he was male in violation of Title IX and removed him from the university without due process in violation of the 14th Amendment. The court denied two motions for preliminary injunction and dismissed the complaint in its entirety.
- Defeated a preliminary injunction request by a state university employee and student newspaper editor claiming that they were retaliated against in violation of the First Amendment for running articles that were unflattering to the university administration.
- Successfully defended numerous cases brought by Robert Davis alleging that public clients violated FOIA and the Open Meetings Act.

Immigration

- **Corporate Restructuring**

Advised and assisted automotive supplier during corporate restructuring to prepare and implement strategy to maintain work authorization and I-9 compliance for thousands of employees.

Advised large global engineering and technology firm on immigration consequences of corporate spin-off.

- **Hiring and Retaining Foreign Workers**

Created strategy and managed successful transfer of hundreds of foreign employees hired as consultants to direct hire for major financial services provider.

- **Global Mobility**

Performed management assessment and implementation of large-scale global mobility program on behalf of Tier 1 Automotive employer by managing relocation, tax and immigration and other legal considerations.

- **I-9 and E-Verify Compliance**

Assisted large engineering services corporation with nationwide internal I-9 audit: prepared and conducted training for HR and management staff on best I-9 practices and implementation of E-Verify.

Serve as lead counsel to major I-9 electronic software solutions provider.

- **Immigration Case Management**

Manage nonimmigrant, immigrant and global visa services needs for multiple large multinational corporations.

- **Employment Compliance**

Developed immigration policy and employer handbook sections on sponsorship for immigration benefits to protect

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U.S. employers from exposure to liability for non-compliance.

- **Start-Up and Entrepreneurs**

Support immigration aspects of obtaining work authorization and securing financing compliance for new business growth from foreign sources.

Advised visa strategies for an Asian Tier 1 automotive parts company to establish U.S. manufacturing facilities and successfully obtain work authorization and visas for its executive, management and specialized support team to join U.S. operations.

- **Overtake Adverse Decisions**

Obtained numerous successful decisions on appeals and motions to reopen through filings with U.S. Citizenship and Immigration Services and the U.S. Department of Labor.

- **Consular Services**

Facilitated expedited processing of treaty trader and investor company registration to ensure E visa employees approval timely to avoid delays in start-up operations in U.S.

- **Individual Immigration Matters**

Secure visas and admission to the U.S. for various dependent family members of foreign workers filing to join in the U.S.

Investigations

- Miller Canfield has decades of practical experience handling Title IX compliance reviews for many public education clients in Michigan. We regularly conduct Title IX investigations, act as hearing officers in student misconduct proceedings, and counsel institutions regarding changes to their Title IX procedures.
- Represented a public authority in response to an independent investigation initiated by the U.S. Department of Justice (DOJ). The investigation, led by the Immigrant and Employee Rights Section of the DOJ's Civil Rights Division, focused on a possible pattern of unfair practices related to citizenship status or national origin in the authority's employment eligibility verification process. Obtained a letter from the DOJ stating that they are closing the investigation and will not be filing a formal complaint or assessing any monetary penalties.
- Conducted an extensive investigation following a public allegation that a softball coach for a major university had intentionally thrown at a play during practice in retaliation for the player's complaints about the team.
- Conducted sexual harassment training for hundreds of employees throughout the U.S. and Canada on behalf of an international manufacturing corporation.

Labor Relations

- Led the bargaining team for the successor agreement to a public school district's collective bargaining agreement. The school district's priorities were to streamline the agreement, provide greater flexibility for the district in making staff assignments, and reduce paid union leave time.

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- Renegotiated a manufacturer's collective bargaining agreement with its union workforce in order to withdraw from an endangered multi-employer pension plan.
- On behalf of large manufacturing company, obtained dismissal of unfair labor practice charges alleging retaliatory termination, unlawful surveillance of union activities, interference with employee rights, and unlawful policies.
- 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.

Retiree Health Benefits

- Successfully defended multiple retiree health benefit class actions brought by former union employees alleging that modifications to their health benefits violated the terms of collective bargaining agreements.
- Successfully represented a prominent aerospace manufacturer after a union and retired workers claiming to represent hundreds of class members sued the company alleging entitlement to lifetime health benefits. After prevailing in efforts to transfer venue to a more appropriate court, we filed and prevailed on a motion for summary judgment.
- Succeeded in vacating an injunction that prohibited a municipality from implementing changes to retiree health benefits that resulted in cost savings of \$5 million.

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 Fringe Benefits Act.