



Brian S. Kaplan

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Brian Kaplan has more than two decades of experience representing employers and prominent senior executives in all aspects of employment-related litigation before federal and state courts, administrative agencies and arbitration panels.

- Employment

His litigation experience includes defense of claims of employment discrimination, retaliation and harassment, as well as claims brought pursuant to the Fair Labor Standards Act and state and local wage and hour laws; disputes involving the enforcement of employment contracts and non-competition covenants; and tort claims such as fraud, breach of fiduciary duty, tortious interference and defamation. Brian also advises clients on a broad variety of subjects, including: employee performance management, terminations and other disciplinary actions; employment, consulting and separation agreements; investigations of alleged harassment and other employee misconduct; employment policies and practices, including compliance with federal and state laws relating to wage and hour practices, leaves of absence and reasonable accommodations; reductions in force; and litigation avoidance.

Notable representations:

- Representation of a large benefits, insurance and wealth management firm and its affiliates in employment-related matters, including defense of claims involving employee terminations and discrimination, strategic advice and counseling, agreements with key personnel, and enforcement of restrictive covenants.
- Representation of a major investment manager in employment-related matters, including strategic counseling and advice concerning key personnel decisions, policy decisions and implementation, wage and hour practices and compliance, management training, and disputes with current and/or former employees.
- Representation of a leading casino and resort company in employment-related matters, including putative class actions involving alleged off-the-clock work and failure to pay overtime, alleged misclassification of exempt status, and alleged failure to pay mandatory service charges to banquet servers, and strategic advice and counseling.
- Representation of a private equity firm and a hedge fund in employment-related matters, including defense of threatened employment litigation, strategic advice and counseling, agreements with key personnel, and enforcement of restrictive covenants.
- Representation of a global bank and a multinational financial services corporation in employment-related matters, including

agreements with key personnel, policy decisions and implementation, wage and hour practices and compliance, disputes with senior executives, and defense of an action filed by a former United States Country Manager for Banking Operations for alleged unpaid compensation.

- Representation of a leading university in connection with a series of lawsuits in New York brought by a former adjunct professor alleging discrimination and retaliation, including successfully obtaining summary judgment dismissal of the discrimination claims, securing a unanimous jury verdict on the retaliation claims, and affirming all rulings on appeal.
- Representation of a leading university in connection with the defense of a series of putative class actions in the Southern District of New York regarding an alleged failure to provide refunds in the wake of the COVID-19 global pandemic.
- Representation of one of the nation's largest retailers, manufacturers, and distributors of apparel and footwear in employment-related matters, including strategic counseling and advice concerning key personnel decisions, and policy decisions and implementation and defense of litigation alleging pregnancy discrimination.
- Representation of a leading technology-driven services company, including putative class actions involving independent contractor classification, the enforcement of class action waivers in arbitration agreements, and alleged joint employer status.
- Representation of a global professional services firm in litigation involving enforcement of restrictive covenants, and counseling with respect to executive recruiting.
- Representation of a leading global public relations firm, including litigation against two former senior executives and their new employer for claims involving the alleged theft of confidential information, clients and staff, including obtaining injunctive relief.
- Representation of a leading hedge fund and its affiliate in litigation, including a dismissal on summary judgment of compensation claims asserted by the affiliate's former Chief Executive Officer.
- Representation of a large international brokerage institution in connection with the enforcement of non-solicitation and confidentiality agreements against financial consultants, including multiple applications seeking and obtaining injunctive relief.
- Representation of a large international media network in connection with defense of an action brought by senior finance executive alleging discrimination and retaliation.
- Representation of a leading pharmaceutical company in employment-related matters, including strategic advice and counseling, and agreements with key personnel.
- Representation of innovative financial services company that provides online money transfer and digital payment services in employment-related matters, including strategic counseling and advice concerning key personnel decisions, policy decisions and implementation, wage and hour practices and compliance, management training, and disputes with current and/or former employees.
- Representation of a leading wholesale food distributor and retail grocery firm in connection with prosecution of claims for breach of a senior executive's non-compete agreement, breach of fiduciary duty and application for injunctive relief.
- Representation of a leading health and wellness organization in employment-related matters including defense of a putative class action alleging wage and hour violations and misclassifications of independent contractors.
- Representation of a global, real estate services firm in connection with the defense of an action by a former executive seeking alleged unpaid compensation and future commissions.
- Representation of a leading not-for-profit healthcare network in connection with strategic counseling and advice concerning enforcement of restrictive covenants.
- Representation of a large, international hotel and hospitality services firm in connection with an unfair competition and alleged theft of trade secrets dispute with a competitor, and employment-related advice concerning its senior executives.
- Representation of one of the nation's leading diversified natural gas companies in employment-related matters, including defense of discrimination, whistleblower and retaliation lawsuits.
- Representation of a leading manufacturer of premium chocolates in employment-related matters, including advice concerning internal investigations of alleged employee misconduct, employee disciplinary actions, and negotiation of key agreements.
- Representation of an international restaurant group in connection with threatened employment litigation, including alleged discrimination and retaliation claims.
- Representation of one of the world's largest distributors of electronic parts and components, including defense against various employment and trade secret claims brought against it by a competitor.
- Representation of a leading fashion modeling agency, in successfully prosecuting and defending claims concerning alleged breach of employment and non-solicitation agreements, claims for unfair competition, tortious interference, breach of contract and promissory estoppel, including proceedings seeking and obtaining injunctive relief.

- Representation of a leading magazine publisher, including lawsuits involving the enforcement of restrictive covenants against former senior executives, and proceedings seeking and obtaining injunctive relief.
- Representation of an entertainment and publishing firm, and its former senior executive, in connection with the successful defense of actions alleging breach of contract, breach of duty of good faith, interference of business opportunities, conversion of profits, and a demand for an accounting.
- Representation of a well-known literary agent in lawsuit by large talent agency for allegedly breaching his employment contract, including successful defense of injunction proceedings.
- Representation of a senior pharmaceutical executive in connection with claims for severance pay and related benefits upon his termination following a change of control, and indemnification pursuant to his employment agreement.
- Representation of nationwide life insurance company in putative class actions concerning their agency compensation agreements, and alleging that a supplemental compensation plan for the company's agents was governed by ERISA, that the insurer defrauded thousands of agents of their retirement and health insurance benefits and that the insurer wrongfully terminated agents in a scheme to evade ERISA.
- Representation of nationwide trucking company in several lawsuits concerning claims for accelerated ERISA severance benefits under a Senior Executive Benefit Plan, claims for breach of fiduciary duty and related issues.
- Representation of senior executives launching emerging private equity firms, investment funds and alternative asset managers in employment-related matters, including strategic counseling and litigation avoidance advice, and compliance with restrictive covenants.
- Negotiation and drafting of employment agreements, consulting arrangements and severance/settlement agreements, and disputes relating to same, involving prominent senior executives of leading investment management and other financial services firms, insurance companies, professional services firms, national media and entertainment firms, and other Fortune 500 companies.

CREDENTIALS

Admissions

- New Jersey
- New York

Recognitions

Brian is repeatedly recognized by publications such as *The Best Lawyers in America* (in the area of Litigation - Labor & Employment); *Chambers & Partners USA* (Band 5 in Labor & Employment - New York); *The Legal 500 United States* (as a leading litigator in Labor and Employment Disputes: Defense); *American Lawyer Media* and *Martindale-Hubbell* (as a Top-Rated, AV Preeminent Lawyer in Labor & Employment); and *New York Metro Super Lawyers*. "*Considered an 'extraordinary lawyer,' Brian 'brings a breadth of knowledge and experience to any matter he handles. He is a well-seasoned litigator and advisor in employment matters. He combines a strong intellect with down to earth practicality in his approach to issues.'*" (Sources quoted in *The Legal 500*) "*Brian is an outstanding, knowledgeable attorney. His strengths are his intelligence, broad experience and creative problem solving.'*" "*He has great instincts, is a superb negotiator and runs an excellent team.'*" (Sources quoted in *Chambers and Partners USA 2021*)

For more information, pursuant to New Jersey Lawyer Advertising guidance, please click here.

Education

- J.D., Harvard Law School
- B.S., University of Pennsylvania
magna cum laude
Benjamin Franklin Scholar
General Honors Program

Courts

- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Second Circuit
- United States District Court for the District of New Jersey
- United States District Court for the Eastern District of New York
- United States District Court for the Southern District of New York

INSIGHTS

Publications

Coronavirus (COVID-19): ten practical steps for global employers, right now (Global)

13 March 2020

These steps are not based on laws of any one jurisdiction but rather are designed to provide a global employer with themes to consider, understanding that what may be suitable for each employer may vary greatly depending on the employer's unique circumstances.

- Co-author, "COVID-19 Pandemic and the Workplace: Getting Comfortable with the Uncomfortable," *New Jersey Law Journal*, August 19, 2020
- Co-author, "Employment & Labor in New York: Lexology Navigator Q&A," *Lexology*, January 8, 2016
- Co-author, "Top 10 Hits for a Liability-Free Holiday Party," *Corporate Counsel*, December 9, 2013
- Co-author, "Food for Thought: The Stray Remarks Doctrine," *New York Law Journal*, September 25, 2013
- Co-author, "Who's the Boss?," *New York Law Journal*, October 22, 2012

Events

Previous

Global Employment Webinar: 2019 in Review and 2020 in Preview

30 January 2020

Webinar

- "Hot Topics in Compliance: Developments in Employment Law," PLI Compliance & Ethics Essentials 2020, June 29, 2020
- "Addressing New Corporate Threats - Employment Law Compliance," PLI Compliance & Ethics Essentials 2019, July 18, 2019
- "DLA International Employment Roadshow - US: Key Issues and Trends," New York, November 13, 2018
- "US: Employment Update," DLA International Employment Conference, Pembroke College, Oxford, September 12-13, 2018
- "The Intersection of Employment Law and Compliance," PLI's Corporate Compliance and Ethics Institute 2017, June 2, 2017
- "Retaliation: The New Frontier," Five O'Clock Club's HR Network Breakfast Seminar, January 29, 2016
- "Best Practices For Terminating Employees With Dignity," Five O'Clock Club's HR Network Breakfast Seminar, April 4, 2014