Employment Litigation

Weil's Employment Litigation Practice Group is a dedicated, full-service team known for providing employers, boards, board committees, and directors and executives with sound, practical advice regarding their most complex and sensitive employment matters, whether they arise in the boardroom, courtroom, or the human resources suite.

Led by a team of first-chair trial lawyers, our Employment Litigation practice group services major global corporations and financial institutions across the full array of employment-related issues in the United States and internationally, including:

- Major class and collective actions alleging claims of discrimination or violations of state and federal wage laws, among other complex employment litigation claims
- Restrictive covenant and trade secrets litigation
- ERISA litigation
- Executive compensation, separation and employment agreements
- Labor-Management relations
- Counseling with respect to the full breadth of issues arising from mergers, acquisitions, corporate restructurings and bankruptcies, including large-scale workforce reductions
- Compliance with workplace statutes, including the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), the Immigration Reform and Control Act (IRCA), the Worker Adjustment and Retraining Notification Act (WARN), and state and local employment statutes, among others.

In addition to high-stakes litigation, our attorneys also regularly advise and counsel companies, and their boards of directors, board and management committees and senior management, on sensitive internal investigations, internal employment compliance audits, diversity initiatives and compensation arrangements. We also provide training and guidance on personnel policies and procedures to help businesses take preventative measures on matters such as employee performance problems, workforce consolidations, whistleblower claims, and discrimination and harassment complaints.

Clients repeatedly turn to our Employment Litigation Practice Group because of the reputation of our practice leaders and track record of success – which spans the globe. Among many other accolades, each of the partners in our practice is recognized by Chambers USA (2018) as among the best in the United States in Labor & Employment litigation and ERISA litigation, and each likewise has appeared for several consecutive years on Human Resource Executive’s “Most Powerful Employment Attorneys” list (most recently in 2018). Their combined knowledge is the bedrock of a strategically sized practice that addresses employment and labor law issues around the world, and as part of all three of Weil's primary practice offerings: litigation, corporate, and bankruptcy and restructuring.

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View Weil's Litigation Trends 2019 Report

"Clients describe the practice as “a group of very well-rounded employment lawyers with high-end litigation skills” “who are committed to successfully advising and defending their clients.”

—Chambers USA 2019

Since 2008 Weil has been ranked among the top five New York Labor & Employment practices.

—Chambers USA 2008-2019

Weil is currently ranked as among the top 10 firms nationwide in each of four separate employment-related categories:

- "Labor and employment disputes,"
- "ERISA litigation,"
- "Trade Secrets,"
- "Workplace and employment counseling."

—Legal 500 US 2019
Discrimination and Other Complex Employment Litigation: We have defended clients across many industries in class actions and other complex cases involving claims based on race, age, sex, disability, sexual orientation, retaliation, and other protected classifications.

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Wage and Hour Litigation and Counseling: Our lawyers have defended an array of clients in some of the largest, most complex state and federal class and collective wage and hour cases.

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ERISA Litigation: Weil represents clients in ERISA class actions involving large potential exposures, a number of which involve managed care, pension benefits, and government investigations.

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Restrictive Covenant and Trade Secrets Litigation and Counseling: Weil has extensive experience litigating and counseling regarding restrictive covenant and trade secrets issues.

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Labor-Management Relations: Our lawyers are skilled in collective bargaining, and understand the employment issues arising from purchase and sale transactions.

› Read more

Transaction and Restructuring Employment Counseling: Weil counsels clients globally on the employment and employee benefits issues that arise in mergers and acquisitions, including identifying and minimizing liabilities associated with any transaction. We also advise clients both in and out of bankruptcy in connection with their efforts to successfully restructure their workforces, including reductions-in-force and plant and office closings.

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Workplace Counseling and Investigations: Weil is called upon regularly to provide employment counseling, develop employment policies and procedures, and investigate sensitive employment claims, often confidentially, for our clients.

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Executive Employment and Personal Services Agreements: Our lawyers are experienced in executive employment and compensation issues in the context of mergers or other changes of corporate control, including bankruptcies, out-of-court restructurings, government-sponsored capital raisings, and spinoffs.

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International Employment Capabilities: Our clients turn to Weil for counseling on the multifaceted employment and labor issues that typically arise in complex cross-border M&A transactions.

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Representative Matters

American Realty Capital Properties Audit Committee

Weil was engaged by the Audit Committee of the Board of Directors of ARCP, a publicly-traded real estate investment trust, to conduct an internal investigation of allegations of accounting irregularities. The investigation resulted in a restatement and the separation from the company of several top executives. A multi-disciplinary Weil team advised the Audit Committee and the Board of Directors with respect to all aspects of the investigation and the resulting fallout.

Weil "brings exceptional experience in handling the full spectrum of employment claims."
—Benchmark Litigation 2019

From 2012 – 2018, Weil’s Employment Litigation practice has scored a trifecta with Human Resource Executive, with two partners included among its list of “100 Most Powerful Employment Attorneys” and another partner included in its list of “Top 20 in Employee Benefits and ERISA”

Weil is currently ranked in “Tier 1” nationwide and in New York for “Litigation – Labor and Employment,” as well as in “Tier 1” in New York for “Employment Law – Management.”

Weil’s Employment Litigation practice is “great, professional, thoughtful and very experienced.” One client notes, “I would trust them with any significant case. I think they’re spectacular.”
—Chambers USA 2018

› Learn More About Working in Our Employment Litigation Practice
Representative Matters

Elite Model Management

Weil represented Elite Model Management Corp., one of the world’s most renowned modeling agencies, in a nationwide collective and New York class action involving an issue of widespread importance in numerous industries across the country, which has garnered significant media attention: whether unpaid interns are “employees” under the minimum wage and overtime requirements of the FLSA and under various states’ laws. In the Elite intern lawsuit—a case of first impression within the industry and also one of the earliest of this kind in any industry—without filing a motion to dismiss, Weil convinced Plaintiff to voluntarily dismiss various causes of action which alleged a variety of recordkeeping violations under the FLSA and New York law, and to file an amended complaint which yielded strategically useful information at an early stage regarding the Plaintiff’s hours worked. That information was critical to Elite’s defenses and litigation strategy, and is usually not disclosed by Plaintiffs, if at all, until the discovery phase of the case. Subsequently, Weil short-circuited the case for Elite by relying on the U.S. Supreme Court’s decision in Genesis Healthcare Corp. v. Symczyk—issued only two months after the Elite lawsuit was filed—which held that if the defendant makes an offer to the plaintiff that would result in the plaintiff’s “complete relief,” then the plaintiff does not have standing to continue the case on behalf of the class of potential plaintiffs. Armed with information from Plaintiff’s revised pleadings and Elite’s electronically stored information, Weil made small, four-figure offers of judgment to the representative plaintiffs. Weil then leveraged its offers of judgment (and the uncertainty those offers created for Plaintiffs’ claims under Genesis) to push the case into mediation, before discovery had taken place, and ultimately negotiated a settlement under which Elite paid only $90,000 in total to the class members, in a case in which Plaintiffs were seeking more than $50 million on behalf of the class.

Weil currently represents Elite in a putative class action that aims to take on the entire New York modeling industry by challenging the classification of models as independent contractors. The action, which also includes claims for conversion, breach of the covenant of good faith and fair dealing, breach of contract, and unjust enrichment, is brought against some of the leading model management firms in the world. The case is the first of its kind of New York state, and has the potential to alter the landscape of the entire modeling industry.

The Great Atlantic & Pacific Tea Company (A&P)

Weil advised global grocery giant A&P on multi-faceted labor and employment matters arising out of its chapter 11 bankruptcy petition.

Marsh & McLennan

Weil successfully represented Marsh in an action by two former executives seeking to obtain severance benefits and the value of stock options forfeited when they were terminated in the aftermath of a New York state investigation into the practice of “contingent commissions” and alleged bid-rigging. In June 2012, the U.S. District Court for the Southern District of New York dismissed the plaintiffs’ claims for malicious prosecution and abuse of process on the pleadings. In its January 2015 decision granting Marsh’s motion for summary judgment, the Court dismissed Plaintiffs’ remaining claims for severance benefits under ERISA and for the value of their forfeited equity awards under state law. In June 2016, the Second Circuit affirmed the summary judgment decision in its entirety, and for the first time established a solid legal framework supporting the right of a company to terminate an employee who fails to cooperate in an internal investigation.

Merrill Lynch

Weil successfully defended Merrill Lynch in multiple purported nationwide class actions alleging discrimination against financial advisors in all aspects of their employment.
Representative Matters

Restoration Hardware
Weil was retained by the Special Committee of the Board of Directors to conduct an independent investigation of whistleblower allegations regarding a relationship between the CEO and another employee.

SDBC, Inc./Brynwood Partners
Weil represented SDBC, Inc. (a Brynwood portfolio company) in securing Second Circuit reversal of a significant National Labor Relations Board decision that held that SDBC engaged in unfair labor practices during the course of collective bargaining negotiations with a trade union.

Sterling Jewelers Inc.
Weil represents Sterling Jewelers in Jock v. Sterling, a class arbitration widely recognized as the largest private Title VII class action in the country, and a corresponding gender bias EEOC suit. In Jock, which is being litigated by the well-known plaintiffs’ firm Cohen Milstein, Weil successfully defeated class certification of all of the disparate treatment gender discrimination claims, substantially narrowing the scope of the remaining claims against Sterling. In late July 2017, Weil obtained a significant victory for Sterling when the Second Circuit vacated an earlier decision of the U.S. District Court for the Southern District of New York and remanded the case to Judge Rakoff to address whether the arbitrator in fact had the power to bind tens of thousands of absent class members who had never opted into the litigation.

Weil also secured a major victory for Sterling in the EEOC litigation by obtaining a complete dismissal on the basis that the EEOC had failed to produce any evidence demonstrating that it had complied with its Title VII pre-suit obligation of conducting a nationwide investigation of Sterling’s employment practices. This decision was subsequently overturned by the Second Circuit in September 2015, thereby reviving the EEOC’s nationwide gender bias suit. Weil petitioned the U.S. Supreme Court to undo this Second Circuit decision. Weil successfully negotiated a virtually unprecedented settlement of the EEOC’s largest matter with no payment to the government being required by our client.
Tuesday Morning, Inc.

Weil was retained to defend Tuesday Morning Inc., a national retailer, in a large putative California wage and hour class action involving nearly 4,000 potential class members in a matter before Judge Edward Chen in the Northern District of California (McMahon v. Tuesday Morning, Inc.). Plaintiff asserted class claims for failure to provide rest breaks, failure to timely pay all final wages, violation of California’s unfair competition law, and civil penalties under the Private Attorneys General Act (PAGA), seeking to recover substantial eight-figure damages. At an early court-ordered mediation, Plaintiff’s counsel refused to settle the case for less than eight figures, but following a big victory by Weil on a key dispositive motion, Plaintiff agreed to settle the case for a six-figure number. This case also involved a ground-breaking ruling on how PAGA settlement funds should be allocated to the class versus the state of California.

Weil obtained the dismissal, with prejudice, of a separate putative California wage and hour class action filed against TMI, in which plaintiffs asserted class claims for failure to pay wages without discount in violation of California Labor Code Section 212 on behalf of TMI’s entire California workforce based on TMI’s use of payroll debit cards, failure to provide meal and rest periods, and failure to pay hourly wages, as well as other derivative California wage-based claims. Plaintiff then filed an appeal with the Ninth Circuit Court of Appeals, but before TMI was required to file its response, the parties reached a settlement whereby the matter was resolved on an individual basis for a nominal sum.

Weil was also hired as replacement counsel in a third California state court wage and hour class action following a series of adverse rulings – including the granting of Plaintiffs’ motion for class certification and the denial of Defendant’s subsequent motions for decertification and summary judgment. Among other California wage and hour claims, plaintiffs challenged TMI’s practice of providing “on-duty” meal periods to its California Senior Sales Associates, an issue that is not frequently litigated and on which there is limited and ambiguous legal authority. The certified class included current and former employees of all 87 of TMI’s California-based stores. Following our retention as counsel, we negotiated an extremely favorable resolution for our client by, among other things, developing and marshalling the discovery record in a manner that evinced compliance on TMI’s part with the DLSE’s standards for “on duty meal periods” and virtually eliminating any PAGA penalty exposure through a novel but substantiated interpretation of that statute.

Weil also successfully settled another California-based putative wage-and-hour class action filed against the company, and obtained an early dismissal on a motion to dismiss of another California-based putative class action brought against TMI involving claims under the Fair Credit Reporting Act and the California corollary background and credit check statutes.

United Health

Weil serves as lead counsel for UnitedHealth in a nationwide putative class action in Arizona federal court brought by a physical therapy provider who purported to have received an assignment of the rights and benefits of at least 60 plan participants and/or beneficiaries, two individuals treated by the plaintiff provider, and the Arizona Chiropractic Society. Weil also represents 35 of the 45 employer-sponsored health plans named as co-defendants. The Ninth Circuit, in its November 5, 2014 opinion reviewing the district court’s grant of summary judgment in defendants’ favor on all claims, expressed its views on several distinct issues likely to recur in ERISA lawsuits throughout the country, including assignments of benefits, constitutional standing, the enforceability of limitations periods stated in the plan, and whether a claims administrator of a self-funded ERISA plan may be sued for benefits. Following the Ninth Circuit’s decision – which affirmed in part, reversed in part, vacated in part, and remanded – defendants petitioned the U.S. Supreme Court for a writ of certiorari, which was denied on October 13, 2015. Defendants then again moved for partial summary judgment, raising several arguments including constitutional and statutory standing, Arizona’s statute of limitations for ERISA benefits claims, the enforceability of limitations periods stated in different plans, and anti-assignment provisions precluding a provider from filing a civil suit on behalf of a participant. In December 2017, the court granted in part and denied in part defendants’ motion, agreeing with the defendants’ arguments regarding the proper statute of limitations and the enforceability of anti-assignment provisions, and considerably narrowing the case. A settlement is pending.