

INSIGHTS INTO LABOR EMPLOYMENT

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Kary Wolfe is a partner in the Labor and Employment Practice Group. She practices in the areas of employment law and general litigation.

Kary represents employers in the banking, fabrication and assembly, real estate development, mining, retail, government, and service industries.

Kary has represented employers in discrimination and retaliation cases, at trial and on appeal, including cases brought under Title VII, Section 1981, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and the Age Discrimination in Employment Act (ADEA). She also has experience handling claims under the Alabama Workers' Compensation Act and the Federal Blank Lung Act. Kary regularly provides day-to-day, practical employment advice, drafts and revises employment policies, performs compliance reviews, and provides employee training.



Q: What are some of the top issues employers face today regarding labor and employment law?

Kary Wolfe: The Department of Labor (DOL) has published new proposed regulations under the Fair Labor Standards Act (FLSA) revising, again, the white collar overtime exemptions. The DOL proposes to increase the salary threshold, and employers will need to evaluate whether to raise salaries to meet the new requirements or to begin paying overtime. The implementation of new regulations is a good time for employers to conduct an audit of their pay practices and to seek the advice of employment counsel in crafting new pay structures. In addition, the new regulations could trigger an increased focus on litigation around pay practices.

Q: With a divided Congress, do you expect any changes to regulations that could affect employers?

Wolfe: Yes. I expect that under the current administration, regulators will continue to look for ways to reduce the regulatory burden on employers. However, there is push back from worker advocates about some of these efforts to deregulate, such as the scaling back of the Occupational Safety and Health Administration (OSHA) electronic record-keeping rule. It is unlikely, however, that Congress will be able to pass any new employment-related legislation.

Q: How has technology affected the labor and employment law field?

Wolfe: Employers are required to manage, access and use a wide array of technology to comply with federal and state laws. The support of an experienced IT staff is often necessary for employers to meet these compliance obligations.

Q: How can employers work with their attorneys throughout the year to minimize the risk of labor and employment litigation?

Wolfe: Consult with your employment counsel before making an employment decision. A 15-minute phone call can identify potential issues and save thousands of dollars in future litigation. HR managers should utilize employment counsel to educate and persuade management on employment practices recommendations, such as policy changes, delaying a termination decision, or conducting a compliance audit of employment practices.

Q: What are some ways companies can navigate the hiring and firing

process while reducing the risk of litigation?

Wolfe: First of all, only properly trained employees should be involved in the hiring and firing process. It is important that employees understand what inquiries are proper during the hiring process, and which ones to avoid. On the flip side, employees involved in termination decisions should have sufficient information and expertise to understand the risks of a particular decision. Lastly, HR should retain oversight for all hiring and firing decision so that deviations from past practices can be flagged and closely examined.

Q: How can a company determine if it needs a specialized labor and employment law firm?

Wolfe: Employers who operate in a highly regulated industry – such as government contractors, long-haul trucking, or offshore drilling – should consider retaining an employment firm that has experience with other employers in their industry.

Q: When choosing a labor and employment firm, what are some specific questions companies can ask during the selection process?

Wolfe: Is the attorney available for consultation with minimal advanced notice? Does the attorney regularly provide training for employees and supervisors on topics such as harassment, hiring practices, leave requests and disability accommodations? Does the attorney regularly attend or present at seminars concerning topics that are relevant to the employer's workforce? Does the attorney have access to colleagues who have expertise in specialized areas of employment law, such as Employee Retirement Income Security Act (ERISA) or the Affordable Care Act (ACA)?

Q: How can a company avoid wage and hour litigation issues?

Wolfe: A classification compliance audit is a great way to identify issues in existing pay practices. Further, employees can reduce future issues by establishing pay scales and adopting job descriptions that specify how certain positions are classified. Any deviations from these policies should require a close analysis by HR.

Q: What is something a business should regularly be discussing with

its labor and employment firm, but often doesn't?

Wolfe: Leave and attendance issues often do not receive sufficient attention until there is a problem with the employee. Employers should carefully analyze all leave requests and enforce their attendance policies in a timely manner, taking into consideration the requirements of the Family and Medical Leave Act (FMLA) and the American's with Disabilities Act (ADA).

“Employers who improperly classify employees as exempt from overtime are at risk of significant liability exposure.”

Q: What are some issues that can cause employment litigation for businesses that they often don't think about until it's too late?

Wolfe: Employers who improperly classify employees as exempt from overtime are at risk of significant liability exposure. FLSA lawsuits remain popular because they offer employees a low-risk means to recover large money judgments. An employee who wins an FLSA litigation can recover not only back pay owed for unpaid overtime

wages, but also “liquidated” or double damages. Another reason that FLSA lawsuits are popular is because the back-pay recovery period can be extended from two to three years if the employee can prove that the employer willfully violated the FLSA. That one-year extension of the recovery period, moreover, also exposes the employer to another year of liquidated damages. Additionally, the damages extend forward until the employer corrects the FLSA violation. This means that the monetary damages to the employer can increase as the lawsuit is litigated. Since litigation typically takes a year or longer, liability frequently exceeds four or five years for the FLSA violation. Finally, FLSA lawsuits are popular because the employer is required to pay the attorneys' fees for the employee whenever the employee wins. And the potential liability for FLSA violations is not limited to the corporate entity; corporate officers and supervisors are potentially liable for wage and hour violations. Personal liability under the FLSA turns on multi-part tests, and many courts applying these tests have found corporate officers personally liable for FLSA violations.

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Our ability to combine our depth in labor and employment law with Jones Walker's broad base of experience in other practice areas gives our clients a distinct advantage beyond their expectations.

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