

# Employment Litigation

Cozen O'Connor's employment litigation team represents foreign and domestic corporations, small businesses, individuals, nonprofits, trade associations and governments in all types of employment litigation. We defend clients in wage-and-hour, discrimination, sexual harassment, defamation, ERISA, employment benefits, trade secrets, noncompetition, and duty-of-loyalty claims. We appear frequently before federal and state courts, agencies and departments (including the EEOC, DOL, IRS, OSHA, and ICE), and arbitration panels.

Because labor and employment matters are governed by interrelated federal, state, and local laws, every case requires a tailored approach. Cozen O'Connor attorneys investigate the specifics of each matter, determine how the legal issues connect to the business issues, and develop a strategy to achieve success as it is defined by the client. Employment litigation often involves sensitive personal matters and typically occurs in the context of an ongoing employment relationship. Achieving good outcomes requires technical, legal, and interpersonal skill. Our attorneys bring all of those capabilities to their work.

When an investigation or lawsuit is launched, clients need counsel who can help them determine the best strategic approach—not counsel who automatically push to take every litigation to the bitter end. Cozen O'Connor attorneys are known for providing clients with clear and candid advice about all of their options and for resolving matters quickly and amicably. In the event that a situation does become irretrievably adversarial, our team of litigators is fully prepared to go to the mat. We have a track record of success in complex negotiations, mediations, and trials.

## SERVICE AREAS

- Investigate employee claims and government inquiries
- Defend clients against individual and class (collective) action lawsuits
- Represent employers in suits alleging discrimination and harassment on the basis of age, race, religion, national origin, gender, sexual orientation, disability, and other areas protected under federal, state, and local law
- Handle cases involving defamation; invasion of privacy; noncompetition agreements; trade secrets; duty-of-loyalty; equal pay; employment benefits; pension and benefit plan fiduciary liability; wage and hour; whistle-blower; retaliation; and wrongful-discharge claims

## Experience

Won a motion to compel arbitration in a case filed in federal court alleging retaliation, race discrimination, sex discrimination, and age discrimination under federal and state law, with the court holding that the arbitration agreement at issue was valid and enforceable under both Georgia law and the Federal Arbitration Act even though the employer had not signed it.

Successfully moved to dismiss an employment discrimination and whistleblower lawsuit brought under New Jersey law against a Pennsylvania-based university health system by a plaintiff who worked from home in New Jersey. In granting the motion, the court held the plaintiff could not state a claim under New Jersey law because she failed to show that the defendant did business in or targeted New Jersey in any purposeful way beyond authorizing her to work from home.

Obtained a favorable result, following an eight-day jury trial in Contra Costa County, Cal., for the defendant in a case centering on alleged unreimbursed business expenses and a purported conspiracy to use the plaintiff's confidential information to raid his employees, which the plaintiff



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## Related Practice Areas

- Italy Practice
- Labor & Employment
- Railway Labor Act

## Industry Sectors

- Food & Beverage
- Gaming
- Insurance
- Real Estate & Construction
- Sports

claimed had resulted in the wholesale destruction of his business. The jury found for the defendant on the conspiracy claim and determined that the plaintiff was not an employee and was therefore ineligible to recover business expenses for the bulk of the time period at issue. While the plaintiff presented expert witness testimony at trial suggesting that his damages exceeded \$20 million, the jury awarded him just slightly over \$30,000.

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Won summary judgment for a medical school in a case brought by a former resident for employment discrimination, breach of contract, and tortious interference. The plaintiff was a practicing Sikh who alleged that he was constructively terminated from the medical residency program after filing a complaint about derogatory comments about his religious practices, including keeping his hair covered by a patka. In granting summary judgment, the district court found that the medical school's stated reason for removing this plaintiff from the program -- his poor clinical performance -- was legitimate and nondiscriminatory. This result was affirmed by the U.S. Court of Appeals for the Second Circuit.

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Won summary judgment for a banking industry client in a case in which the plaintiff, whose employment had been terminated because he was believed to have committed forgery, alleged that he was fired due to his gender, disability, and request for paternity leave. This result was affirmed by the U.S. Court of Appeals for the Second Circuit.

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Obtained a favorable settlement after mediation for a major airline in a wage and hour class action and PAGA lawsuit.

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Represented a staffing company in obtaining a Workplace Violence Restraining Order that protects its employees from violence, danger, or abuse at work.

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Secured a complete victory for a company following a hard-fought, two-week arbitration hearing, after which the arbitrator upheld the termination of a highly compensated top executive and rejected his claims of age and disability discrimination, for which he sought lost pay damages totaling more than \$74 million. The executive -- who was in his sixties, had a heart condition, and had been with the company for more than 20 years -- was removed from his position due to his ineffective response to a company crisis.

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Won a complete victory for a Fortune 100 company in a week-long arbitration hearing in a breach of contract case brought by a former software sales representative, alleging that he was owed hundreds of thousands of dollars in sales commissions.

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Successfully moved to dismiss an age discrimination suit filed against a university client in which both the plaintiff's and the comparator's military service was a key fact.

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Won summary judgment in five cases brought against a single client on interrelated claims of race discrimination, sex and age discrimination, retaliation, hostile work environment, and intentional infliction of emotional distress.

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Won summary judgment for a university on claims of retaliation under the False Claims Act ("FCA") and wrongful termination under Pennsylvania law brought by a long-time employee whose employment was terminated 3-4 months after making a report to an Institutional Review Board. In granting summary judgment, the court held that the plaintiff's report did not rise to the level of protected conduct under the FCA, and that her termination was not in violation of public policy as is required in order for an at-will employee to make out a wrongful termination claim under Pennsylvania law.

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Won a unanimous defense verdict on behalf of a medical center, a university, and two individual

defendants at the conclusion of a three-week jury trial in federal court in Chicago in which the clients' potential exposure was \$80 million. The plaintiff, an orthopedic surgery resident and Air National Guard officer whose employment was terminated in the final year of his residency, brought claims of breach of contract, defamation, and discrimination and harassment under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), and sought back pay and reinstatement or lifetime earnings as a spine surgeon. After hearing testimony from more than a dozen witnesses, and with a 19-page verdict form in hand, the jury reached its verdict in less than three hours.

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Secured dismissal, after a multiday virtual trial before the Office of Administrative Law Judges, of claims brought under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21"). The complainant alleged that he was fired in retaliation for reporting numerous safety violations of the Federal Aviation Regulations over which OSHA has jurisdiction. After OSHA issued a finding that it was unable to conclude there was reasonable cause to believe a violation occurred, the complainant requested a trial. After hearing the testimony of seven witnesses and reviewing post-trial briefs, the ALJ dismissed the complaint in its entirety with prejudice and denied all relief sought.

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Secured a \$3.5 million judgment following a multi-day arbitration for a dining and facility management services company in a breach of contract case which also involved liability incurred when the defendant's termination of the contract at issue caused the client to withdraw from a union pension fund to which it had been contributing. After winning a motion for partial summary judgment that secured hundreds of thousands of dollars in past due invoices, attorneys' fees, and defeated a \$670,000 counterclaim, we prevailed at arbitration with the arbitrator finding that the client was entitled to indemnification by the defendant of \$2.4 million of withdrawal liability and entitled to more than \$600,000 on other claims related to the applicable collective bargaining agreement and the termination of the parties' contract.

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Won a jury verdict for the defendants in a sexual harassment case that was the first in a series of four filed against our client by a group of former employees, all of whom alleged sexual harassment and hostile work environment. The difficulty level in the case was increased significantly by virtue of the other three plaintiffs being permitted to testify about their own alleged harassment in this trial. We prevailed by focusing the jury on the claims at issue, on the plaintiff's biased expert, and on the fact that her boyfriend had anonymously told the alleged harasser that the lawsuit was fabricated.

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Obtained dismissal of an FMLA retaliation claim on standing grounds based on lack of a concrete injury tied directly to the alleged retaliatory conduct.

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Won summary judgment for the employer in case involving claims under the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Tennessee Human Right Act brought by a plaintiff alleging that his employment was terminated due to his age and his association with his disabled daughter, and also in retaliation for his complaints about age and associational discrimination.

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Won summary judgment for a retail client in a case in which the plaintiff brought claims of retaliation and gender, age, and disability discrimination after her employment was terminated on the grounds of her insubordination.

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Won summary judgment for a national client in San Bernardino County Superior Court in a suit involving claims of sexual harassment and wrongful termination.

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Won summary judgment on behalf of a hospital in a case litigated in Pennsylvania state court in which the plaintiff alleged gender discrimination, hostile work environment based on gender, wrongful termination, and retaliation in violation of the Pennsylvania Human Relations Act, 43 P.S. § 951, *et*

*seq.*

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Won summary judgment on behalf of a Fortune 100 grocery client in case, filed in the Northern District of Georgia, involving claims of race discrimination brought under Title VII and Section 1981, as well as unpaid overtime brought under the Fair Labor Standards Act.

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Won summary judgment for a large grocery retailer in an employment discrimination case in the U.S. District Court for the Western District of Louisiana. The plaintiff was fired after several inappropriate interactions with coworkers, and was pregnant at the time of her termination. She brought claims of discrimination and retaliation under the Pregnancy Discrimination Act (PDA) and Louisiana's employment discrimination law. Our team established that the plaintiff did not meet her burden to show that the client failed to accommodate her but did accommodate other similarly situated employees, and we further established that the client had a nondiscriminatory reason for terminating the plaintiff's employment.

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Secured a complete defense verdict, after a three-day jury trial, on behalf of a turbine repair company and three individual owners in a lawsuit filed against them by a former salesman who claimed breach of contract and fraud, and sought more than one million dollars in damages.

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Won a breach of contract case and obtained a judgment for costs against the plaintiff, a retail employee who alleged her employer broke a binding promise to bend transfer rules for her benefit.

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Won summary judgment on behalf of a county on claims asserted under the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and the Pennsylvania Human Relations Act (PHRA). The plaintiff was a former groundskeeper whose employment was terminated after he repeatedly violated the county's FMLA policy. Before securing summary judgment, we successfully moved to dismiss the plaintiff's claims for failure to accommodate under the ADA and PHRA. With summary judgment granted on all remaining counts, the case was dismissed with prejudice.

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Secured an important arbitration victory on behalf of a client facing a commission claim of more than \$1.3 million, plus attorney's fees and costs of more than \$450,000, filed by a former salesperson alleging breach of his commission plan. At issue was a decelerator provision in the commission plan which the client had applied to the claimant's commission on a \$14 million sale. After six days of arbitration involving several complex legal issues, the arbitrator ruled in the client's favor on all legal and factual issues. This was a particularly important victory for the client, as the same clause had been at issue in a number of other jurisdictions.

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Won summary judgment, and successfully defended the result before the U.S. Circuit Court of Appeals for the Ninth Circuit, on behalf of a major hospitality industry client in an employment action that was barred by a prior settlement agreement between the plaintiff and the client's parent company. This award included attorney's fees and costs to the client, which were also affirmed on appeal.

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Secured both directed and jury verdicts in favor of a financial industry client on claims brought by a former executive who alleged the client failed to pay him certain wages and bonuses. We also prevailed on counterclaims to recover personal expenses the plaintiff had charged to his corporate credit card.

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Defended our client against a putative FLSA and IMWL class action brought by janitors seeking unpaid overtime for alleged off-the-clock preparatory work. During one of the plaintiff's deposition their counsel engaged in an outrageous pattern of disruptive, uncivil, and unprofessional conduct, including extreme speaking objections. As a result, we brought and won a motion for sanctions against the plaintiffs and were permitted to re-depose the plaintiff. Ultimately we were able to

leverage the sanctions ruling into a favorable settlement for our client.

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Obtained a defense verdict in a case in which the plaintiff, a receptionist at the defendant-hospital, alleged she was subjected to sexual harassment at the hands of her supervisor, purportedly culminating in an assault in a control room near the reception area. Plaintiff sued both the hospital and the supervisor, and the case went to hearing before an ALJ in the Chicago Commission on Human Relations, a notoriously employee-friendly forum. We obtained security camera footage of the reception area in the time after the alleged assault, which showed that Plaintiff calmly left the control room, greeted a number of incoming visitors, and even leafed through a gossip magazine in the time that followed the alleged assault. This impeachment evidence, combined with a surgical cross examination, resulted in a complete defense verdict.

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Achieved a precedent-setting decision from the U.S. Court of Appeals for the Seventh Circuit in a putative class and collective action brought against a social media company, holding that employees who had signed arbitration agreements with class action waivers were not entitled to receive notice of the collective action under the FLSA.

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Represented a manufacturer in a collective and class wage and hour action, defeating class certification of state off-the-clock overtime and minimum wage claims and obtaining decertification of conditionally certified federal off-the-clock overtime and minimum wage claims.

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Won summary judgment on claims of discrimination and retaliation brought under 42 USC § 1981, based upon race, and the Employee Retirement Income Security Act of 1974 (ERISA), based upon an employee's receipt of pension benefits, on behalf of a Fortune 100 grocery retailer.

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Represented an agriprocessing company and 19 individual managers named as defendants in a 16-plaintiff retaliatory discharge lawsuit filed in Iowa state court. The plaintiffs brought individual claims based on allegations of a plant-wide culture with respect to workplace injuries, medical treatment and return to work policies, which impacted multiple departments of the operation. Taking an aggressive approach to discovery against the plaintiffs and analyzing an enormous amount of electronic information, our strategy culminated in the defeat of seven plaintiff's claims on motions for summary judgment, the voluntary withdrawal by four plaintiffs who chose not to respond to motions for summary judgment and settlement on favorable terms of the remaining plaintiffs. Five of the seven plaintiffs dismissed on summary judgment appealed to the Iowa Supreme Court. Through a combination of advocacy and favorable settlements, all but one of the appeals were withdrawn.

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Defended a university in a sex discrimination promotion and harassment lawsuit filed by a former Assistant Dean of the Law School. Due to the nature of the claims and publicity, the University asked us to take over the case from the Texas Attorney General's Office. After 15 depositions and written discovery, including hotly contested discovery disputes, the case was confidentially settled shortly before trial.

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Obtained summary judgment and dismissal of a complaint alleging that our health insurer client unlawfully terminated the plaintiff's employment because of a disability while she was out on disability leave. We showed that the record established that the company terminated Plaintiff's employment due to her failure to follow a required policy for initiating disability leaves, rather than because of her underlying disability. Dismissal of this case at the summary judgment stage is particularly noteworthy because the claim was brought under the New York City anti-discrimination statute, which generally requires a more liberal, broad interpretation that favors aggrieved individuals more than its state and federal statutory counterparts.

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Won summary judgment on behalf of the largest health insurer in New York State in an age

discrimination case filed by a senior program specialist whose employment was terminated for performance-related reasons less than one year after she was transferred to a new “and younger” supervisor. The plaintiff brought both a discrimination and a retaliation claim, each of which was dismissed when the court granted our motion.

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Won summary judgment on behalf of a community hospital on disparate treatment and retaliation claims under the ADEA.

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Won summary judgment on behalf of a health insurance and wellness company on claims of discrimination and retaliation in violation of the New York State Human Rights Law which centered on the plaintiff's allegations of racial coding.

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We secured a favorable settlement on behalf of a large client facing millions of dollars in alleged damages in a suit brought for personal injury and under the New Jersey Law Against Discrimination. At the outset of the case, the plaintiff refused to discuss settlement unless the client's initial offer was at least seven figures. When settlement discussions failed, we used social media research and computer forensics to show that the plaintiff's claim of injury was greatly exaggerated, that he otherwise was lacking in credibility, and that he had spoliated evidence. Based on this investigation and facing spoliation sanctions, the plaintiff settled for a sum far less than he originally sought.

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We successfully enforced a covenant not to compete against an employee located in Oregon on behalf of a Chicago-based employer. In this case, the employee sought not only to try the case in federal court in Oregon, but also to have employee-friendly Oregon law apply to the contract. We filed a motion for a change of venue in which we successfully argued that Illinois was the only proper venue and that Illinois law was the appropriate substantive law to govern the contract. After receiving this favorable ruling we secured a quick settlement that included the employee's continued adherence to the contract.

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After a three-week bench trial in federal court, we obtained a complete victory for our client, a major chemical manufacturer, in a retaliation case brought by a former employee. This victory was the capstone of more than 15 years of litigation involving multiple lawsuits filed by the former employee. The lawsuit that was tried centered on whether certain litigation decisions in an underlying case were retaliatory, and also presented complicated legal issues that had a dramatic effect on the damages which could be sought at trial. The Cozen O'Connor team filed a number of pre-trial motions on these issues seeking to limit damages, and won all of them, with the net results of removing \$69 million of the claimed \$70.5 million in damages and significantly limiting the scope of the trial. This victory was affirmed on appeal to the U.S. Court of Appeals for the Third Circuit.

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We successfully defeated two motions for class certification in a putative nationwide Rule 23 class action centering on alleged gender discrimination, brought against a Fortune 100 company. The lead plaintiff, a former female executive, twice sought to certify a class of more than 1,700 female managerial employees, alleging a pattern or practice of discrimination in pay and promotions. The litigation team successfully defeated class certification, demonstrating through unimpeachable expert analyses that the plaintiff could not meet her burden of showing commonality and typicality. When the Lilly Ledbetter Act significantly modified the analysis for Equal Pay Act claims, the litigation team defeated a second attempt at class certification. The district court's rulings were subsequently affirmed on appeal to the Seventh Circuit. We then defended the company in connection with 24 individual lawsuits filed by putative class members and resolved them on favorable terms.

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Successfully moved to dismiss claims brought against a private university under Section 1983, based upon allegations that the university, acting through its police department, violated plaintiffs' civil rights by taking disciplinary action against the plaintiff police officers which they claimed was based on their

Caucasian race. The court adopted our argument that the university was not acting under color of state law when it took the personnel actions against the officers. We also successfully moved to dismiss breach of contract claims by showing that certain language in the university's written rules and regulations did not alter the plaintiffs' status as at-will employees with no employment contract.

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