

Brian T. McMillan

Shareholder

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Focus Areas

Litigation and Trials
Discrimination and Harassment

Overview

Brian T. McMillan focuses his practice on wrongful termination and employment discrimination litigation in state and federal courts. He also defends and represents employers in:

- Wage and hour claims
- Unemployment hearings and appeals
- Arbitrations
- Labor negotiations
- Workplace violence issues
- Claims under state and federal discrimination laws

Among his notable successes, Brian was lead counsel in the precedent setting case that determined temporary psychological impairments do not constitute disabilities under the Americans with Disabilities Act - (*Sanders v. Arneson Products Inc.*, 91 F.3d 1351 (9th Cir. 1996)).

Additionally, Brian frequently counsels employers on day-to-day employment law issues such as:

- Employment contracts
- Covenants not to compete
- Unfair business practices
- Personnel policies
- Hiring and termination procedures
- Risk management protocols

- Mandatory arbitration

He also conducts in-house training sessions and risk management audits to help clients avoid employment-related liability.

Co-creator of Littler Mendelson's Risk Management Program, a comprehensive program to review and assess an employer's employment policies and practices, Brian is widely-considered a leading authority on employment practices liability insurance issues and has authored several articles on this topic. He has also published articles on topical employment law issues and has made numerous presentations on specialized areas of labor and employment law, such as:

- Wrongful termination
- Wage and hour issues
- Avoiding liability associated with layoffs and downsizing
- Discrimination
- Violence in the workplace

Professional and Community Affiliations

- Member, Labor and Employment Law Section, Santa Clara County Bar Association
- Member, Labor and Employment Law Section, San Mateo County Bar Association
- Member, Labor and Employment Law Section, State Bar of California

Education

J.D., Santa Clara University School of Law, 1983

B.A., University of California, Davis, 1980, *With Honors*

Bar Admissions

California

Courts

U.S. Supreme Court

U.S. Court of Appeals, 9th Circuit

U.S. District Court, Northern District of California

U.S. District Court, Eastern District of California

U.S. District Court, Southern District of California

Publications & Press

EPLI Often Excludes Wage and Hour Claims

SHRM Online

November 1, 2021

How to avoid suits alleging wage-and-hour violations

Business Insurance

July 24, 2012

Brian McMillan Accounts For Dramatic Increase in Wage and Hour Class Actions

Workforce Management

December 21, 2007

Managing Employment Risk of Employment-Related Practices Liabilities by Influencing the Behavior of Employee Claimants

Western New England Law Review, Vol. 21, Issue 2, pg. 427-446

1999

The EPLI Shopping Guide

Insurance Litigation

1999

EPLI Policies

National Law Journal

1998

Questions to Ask When Buying EPLI

Preventative Law Reporter, Vol. 6, No. 3

Fall 1997

Breathe Again, Insurance for Employers

California Law Business

1997

Speaking Engagements

Insurance Coverage of Employment Law Claims: How Employers and Insurance Carriers Can Work Together Effectively

Littler Mendelson, Scottsdale, AZ

May 11, 2012

Avoiding Potential Conflicts of Interest Between Insureds and Defense Counsel

Employment Practices Liability Symposium

April 2006

Employment Class Actions

Employment Law Symposium - Professional Liability Underwriting Society

April 2005

Avoiding Litigation Landmines

National Truckers Association Conference

2001

Avoiding Litigation Landmines

Annual Convention - American Supply Association

2001

Employment Practices Liability Insurance

Producers' Conference - AIG

2001

Separation Practices - Severance/Release Agreements and Reductions in Force

Top Five Data Services

2001

Influencing the Behavior of Employee Claimants

EPL Insurance Symposium - Professional Liability Underwriting Society

March 1999

Avoiding Litigation Landmines

AIG Executive Conference

October 1998

Books & Book Chapters

- *Managing Workplace Harassment -- A Guide for Preventing, Addressing and Resolving Harassment Issues on the Job, LexisNexis, 2003*
- *Ten Steps to Help You Stay Out of Court - Hire & Fire Guide, 2001*
- *A Complete Program for Preventing, Addressing and Resolving Harassment Issues in the Workplace - Unlawful Harassment Module, 2000*
- *Family and Medical Leave Act -- A Ten-Step Federal and State Compliance Guide For Employers, 2000*