



Kerry E. Notestine

Shareholder
Co-Chair, Business Restructuring Practice
Group

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Focus Areas

Litigation and Trials
Business Restructuring and M&A
Discrimination and Harassment
ERISA and Benefit Plan Litigation
Class Actions
Energy
Littler Restructuring Assessment Solution

Overview

Kerry E. Notestine represents management in employment matters, particularly trials and other litigation under federal, state, and local anti-discrimination statutes, and has deep knowledge in reductions-in-force and other downsizing issues. Kerry wrote the leading book on trials of employment law cases, *Employment Law Trials: A Practical Guide*. Kerry also counsels employers regarding other employment issues and represents employers in legal disputes before government agencies, arbitrators and administrative tribunals.

Kerry has tried 25 lawsuits to verdict in federal and state courts, including one class action, and has represented companies in more than 20 administrative trials, non-labor arbitrations, and labor arbitrations. His jury trials include:

- Multi-plaintiff race discrimination case involving nooses in the workplace
- Two Fair Labor Standards Act misclassification cases
- Several cases involving alleged unlawful discrimination and retaliation
- Several cases involving alleged breach of employment agreements

He also handled a federal class action bench trial involving alleged denial of retiree medical benefits in violation of ERISA, as well as state jury trials involving claims of denial of employment benefits, unlawful discrimination and retaliation, employment law torts, and breach of employment contracts.

Additionally, Kerry has represented employers in administrative law trials and arbitrations involving exempt status under the Washington wage and hour statute, retaliation under the Pipeline Safety Improvement Act, sexual harassment claims, executive compensation and numerous matters relating to union/management relations.

He also has litigated employment claims, in which the claimant alleged:

- Misclassification of workers as independent contractors
- Sexual harassment
- Retaliation and workers' compensation retaliation
- Intentional infliction of emotional distress
- Assault and defamation
- Breach of executive contract and severance rights
- Race, national origin, religion, and gender discrimination
- Disability discrimination and failure to accommodate
- Age discrimination
- Violations of the Family and Medical Leave Act
- Violations of the Employee Retirement Income Security Act
- Violations of the Worker Adjustment and Retraining Notification Act
- Denial of employment benefits

He has represented companies in more than 20 appeals.

Kerry has obtained numerous published decisions, including dismissals, summary judgments, and motions for decertification of collective actions. He has served as lead counsel in the defense of significant employment class/representative actions, including cases involving claims of:

- Misclassification as independent contractors involving several hundred opt-in plaintiffs
- Denial of retiree medical benefits under the Employee Retirement Income Security Act in federal district court involving 100 class members
- Misclassification of assistant store managers under the Fair Labor Standards Act involving 600 class members
- Race discrimination in hiring involving 8,000 class members
- Failure to provide proper notice under the Worker Adjustment Notification and Retraining Act in a mass layoff of 1,800 individuals
- Age discrimination in hiring involving over 500 class members

He also participated in the litigation team on two other significant class/representative actions, one involving more than 150 plaintiffs in a representative action under the Age Discrimination in Employment Act and the other a 1,500-member class action involving claims of sex discrimination in compensation and promotion.

Kerry's clients span the following industries:

- Oil and Gas
- Oil and Gas Services
- Financial Services
- Staffing
- Manufacturing

A frequent writer and speaker on employment matters before business and professional groups, Kerry has authored more than 10 articles and book chapters on employment law topics.

Kerry is the co-chair of Littler's Business Restructuring Practice Group, a member of the EPLI Committee core group and a founding member of the Complex Litigation and Jury Trials Practice Group. Prior to becoming a shareholder at Littler, Kerry was an associate and partner with a large Houston based general practice firm for 14 years.

Professional and Community Affiliations

- Member, Labor and Employment / Litigation / Tort and Insurance Practice Sections, American Bar Association
- Member, Former Chair and Vice-Chair , Employer/Employee Relations Committee, American Bar Association, 1993-1999
- Member, Labor and Employment / Litigation Sections, State Bar of Texas
- Member, Labor and Employment Law / History Committees, Houston Bar Association
- Former Chair, History Committee, Houston Bar Association, 1988
- Former Council Member, Labor and Employment Committee, Houston Bar Association, 2003-2005
- Former Member, Drug and Alcohol Abuse Committee, Texas Young Lawyers, 1984-1985
- Former Chair, Houston Management Labor Forum, 1989
- Member, Board of Directors, Lifehouse, Inc., 1989-1992
- Member, Board of Directors, Youth-Reach Houston, Inc., 1986-1988
- Member, Board of Directors, Encorps, Inc., 1984-1985
- Ruling Elder, City of Refuge Church, 1996-1998
- Ruling Elder, Christ Evangelical Presbyterian Church, 1991-1992
- Deacon, First Presbyterian Church, 1988-1991
- Chair, Wednesday Night School of Christian Living, First Presbyterian Church, 1985-1991
- Participant, Houston Senior Baseball League - World Series, 1993
- Deacon, Crosspoint Church, Bellaire, 2017-present

Recognition

- Fellow, *College of Labor and Employment Lawyers*, Inducted 2017
- Fellow, *Texas Bar Foundation*, 2013-present

- Fellow, *Houston Bar Foundation*, Inducted 2022
- Named, The Best Lawyers in America®, 2008-2022
- Named, Lawyer of the Year, Management - Labor Law, Houston, *The Best Lawyers in America®*, 2019
- Named, Lawyer of the Year, Litigation - Labor & Employment, Houston, *The Best Lawyers in America®*, 2013
- Named, Super Lawyer, Texas, *Super Lawyers*, 2003-2005, 2008-2018
- Awarded, AV® Peer Review Rating, *Martindale-Hubbell*

Education

M.A., University of Virginia, 1985

J.D., University of Virginia School of Law, 1983

B.A., DePauw University, 1979

Bar Admissions

Texas

Courts

U.S. Supreme Court

U.S. Court of Appeals, 3rd Circuit

U.S. Court of Appeals, 5th Circuit

U.S. Court of Appeals, 9th Circuit

U.S. Court of Appeals, 10th Circuit

U.S. Court of Appeals, D.C. Circuit

U.S. District Court, Northern District of Texas

U.S. District Court, Eastern District of Texas

U.S. District Court, Southern District of Texas

U.S. District Court, Western District of Texas

U.S. District Court, District of Colorado

Publications & Press

Utah Enacts Law Related to COVID-19 Vaccination and Testing Requirements in the Workplace

Littler ASAP

November 29, 2021

Best Lawyers in America® 2022 Edition Honors More Than 240 Littler Lawyers

Littler Press Release

August 19, 2021

IRS Issues Guidance on the American Rescue Plan Act COBRA Subsidy

Littler Insight

May 26, 2021

DOL Issues Guidance on the American Rescue Plan Act COBRA Subsidy

Littler ASAP

April 9, 2021

The American Rescue Plan Act Includes Required COBRA Subsidy

Littler Insight

March 23, 2021

Dear Littler: How do we Determine Where Remote Employees “Work” for WARN Act Purposes?

Dear Littler

January 19, 2021

EEOC Issues Guidance on Inclusion of International Employees on OWBPA Disclosures

Littler ASAP

January 15, 2021

Workforce Reductions and Statistics: A Primer and Recommendations

Littler Report

December 15, 2020

Warning to New York Employers: The NY WARN Act Now Requires WARN Notices be Sent to Additional Governmental Recipients

Littler ASAP

November 11, 2020

Racial-Discrimination Settlements Usually Come with an NDA. That’s Changing.

The Wall Street Journal

October 20, 2020

Dear Littler: What Do We Do If We Cannot Bring Our Employees Back From Furlough?

Dear Littler

September 4, 2020

Best Lawyers in America© 2021 Edition Honors More Than 250 Littler Lawyers

Littler Press Release

August 20, 2020

Navigating layoffs is always hard. During a pandemic, it's harder.

Compliance Week

June 15, 2020

Littler Launches Holistic Workforce Restructuring Solution

Littler Press Release

May 28, 2020

DOL Issues COVID-19 WARN Act Guidance

Littler ASAP

April 30, 2020

Virus-Driven Mass Worker Layoffs Could Soon Require Notice

Bloomberg Law

March 18, 2020

Furloughs and Other Temporary Responses to Coronavirus (COVID-19) Disruptions

Littler Insight

March 11, 2020

Coronavirus (COVID-19) Guidance for Business Preparedness

Littler Insight

March 4, 2020

Best Lawyers in America® 2020 Edition Honors More Than 200 Littler Lawyers; 14 Named Lawyer of the Year

Littler Press Release

August 15, 2019

Best Lawyers in America® 2019 Edition Honors More Than 200 Littler Lawyers

Littler Press Release

August 15, 2018

The EEOC Phoenix District Office Challenges Releases Waiving Future Financial Liability for Discrimination Claims

Littler Insight

February 16, 2018

Labor Board Could Loosen Curbs on Nondisclosure Agreements

Bloomberg BNA

January 3, 2018

Temporary Furloughs May Trigger California WARN Act Notice Obligations

Littler ASAP

December 5, 2017

Best Lawyers in America© 2018 Edition Honors More Than 200 Littler Lawyers

Littler Press Release

August 17, 2017

Five Littler Shareholders Elected as Fellows to the College of Labor and Employment Lawyers

Littler Press Release

June 29, 2017

Third Circuit Rules "Subgroup" Disparate Impact Claims Are Cognizable Under the ADEA

Littler Insight

February 14, 2017

The Best Lawyers in America© Honors More Than 180 Littler Lawyers in Its 2017 Edition

Littler Press Release

August 16, 2016

Seventh Circuit Affirms the Dismissal of Lawsuit Based on the EEOC's Failure to Conciliate Claims Related to Releases

Littler Insight

January 13, 2016

The Transformation of the Workplace Through Robotics, Artificial Intelligence, and Automation

Littler Report

August 4, 2016

Littler Attorneys Recognized in the Best Lawyers in America© 2016 Edition

Littler Press Release

August 18, 2015

EEOC Lawsuit Against CVS Pharmacy Challenging Severance Agreements Dismissed

Littler Insight

October 20, 2014

Littler Attorneys Included in the Best Lawyers in America© 2015 Edition

Littler Press Release

August 18, 2014

They Really Mean It: the EEOC Sues Another Employer for Allegedly Overbroad Releases

Littler Insight

May 13, 2014

Fifth Circuit Says HR Manager's Comments Could Support Finding of Illegal Retaliation

Bloomberg BNA Daily Labor Report

April 9, 2014

Recommendations in Response to the EEOC's New Lawsuit on Severance Agreements

Littler Insight

March 4, 2014

Littler Attorneys Named in Best Lawyers in America® 2014 Edition

Littler Press Release

August 15, 2013

Government sequester could bring host of issues for employers

Thomson Reuters News & Insight

February 27, 2013

Sequester Threat Inflames Contractor WARN Woes, House Told

Law360.com

February 14, 2013

Tenth Circuit Issues Confirming Decision: Employers Are Not Required to Provide Employees with Indefinite Leave from the Performance of Essential Functions

Littler Insight

September 17, 2012

Best Lawyers in America® Names 164 Littler Attorneys to 2013 Edition

Littler Press Release

September 7, 2012

Best Lawyers in America® Names 108 Littler Lawyers to 2012 Edition

Littler Press Release

September 12, 2011

Recent EEOC Lawsuits Highlight Importance of Adopting Comprehensive Procedures for Managing Employee Leaves

Littler Insight

February 22, 2011

The Littler Ten: Employment, Labor and Benefit Law Trends for Navigating the New Decade

Littler Report

September 30, 2010

Seventy-Two Littler Attorneys Named to The Best Lawyers in America® 2011

Littler Press Release

August 9, 2010

61 Littler Attorneys Named to The Best Lawyers in America® 2010

Littler Press Release

August 14, 2009

EEOC Issues New Guidance on Severance Agreements

Littler Insight

July 31, 2009

51 Littler Attorneys Named to The Best Lawyers in America

Littler Press Release

October 31, 2008

The Texas State Statute Prohibiting Discrimination Because of an Evacuation

Littler Insight

September 17, 2008

Controlling Outside Counsel Costs Through an Alternative Billing Model

ACC Docket, p. 71

May 2008

Recent Court Decisions Identify Concerns in Drafting Releases

Littler Insight

July 18, 2007

Kerry Notestine Says Personal Lives Can Hurt Workplaces

Houston Chronicle

April 22, 2007

Fifth Circuit Holds that Merger Agreement Amends Retiree Medical Program and Prevents Subsequent Amendment to Benefits Coverage

Littler Insight

November 6, 2006

Sharing Compensation or Benefit Information Between Competitors May Violate Antitrust Laws

Littler Insight

October 2, 2006

Compensation and Discipline Issues Under Texas and Federal Law Associated with Hurricane Rita Evacuation

Littler Insight

October 5, 2005

Texas Bar & Restaurant Owners Compelled to Take Measures to Prevent Identity Thefts by Employees

Littler Insight

August 29, 2005

Employment Issues for Bankrupt Employers

Law.com

April 9, 2002

Proof and Causation Standards in Employment Cases: The Need For A Uniform Standard Under Federal And State Law

The Houston Lawyer 26

February 2000

Closing Arguments

29 The Brief 72

Fall 1999

Cross Examination in Employment Cases

10 The Practical Litigator 37

March 1999

10 Rules for Every Employer

Abode Magazine

June 1997

Human Resources Management for Lawyers: An Employment Law Primer

57 Tex. B.J. 173

February 1994

Fielding the Issue of Unlawful Termination of Employment

The Houston Lawyer 20

August 1989

Speaking Engagements

2021 Houston Employer Conference

Houston, TX
October 26, 2021

2020 Voluntary Retirement and Exit Incentive Programs: A Viable Alternative to Involuntary Layoffs

July 23, 2020

Littler Global Summit 2018 - Part 3: A Tale of Three Cities: Responding to Natural Disasters from Puerto Rico and Houston to Mexico City

Littler Executive Employer, Phoenix, AZ
May 2, 2018

Conducting Efficient, Effective and Lawful Workplace Investigations

2017 Littler Houston Employer Conference
August 10, 2017

The New Supreme Court Balance: Implications for Labor and Employment Law

May 11, 2017

Employment Law Update

Corporate Organization Ombudsmen Roundtable, Houston, TX
September 28, 2016

2016 Houston Employer Conference

Houston, TX
August 11, 2016

What Employers Can Do to Secure Effective Releases, Separation Agreements, and Settlement Agreements Despite the EEOC, NLRB, and SEC Recent Enforcement Agendas

Clear Law Institute Webinar
November 6, 2015

Drafting Severance and Confidentiality Agreements Amid New EEOC, NLRB, and Now SEC Scrutiny

Strafford Publications Webinar
September 9, 2015

2015 Houston Employer Conference

Houston, TX
August 13, 2015

Working With Expert Witnesses Throughout Your Employment Law Case

Florida Bar Association Webinar
February 24, 2015

Furloughs, WARN, Reductions-in-Force and Other Cost-Savings Considerations in the \$40 per Barrel Oil Economy

February 11, 2015

What Employers Can do to Secure Effective Releases, Separation Agreements, and Settlement Agreements Despite the EEOC and NLRB's Recent Enforcement Agendas

December 11, 2014

Wage & Hour Issues in the Oil Patch

December 2, 2014

Managing Outside Counsel – The Benefits of Value Billing

2014 Legal Seminar - Petroleum Equipment & Services Association (PESA), Houston, TX
November 7, 2014

Drafting Severance and Confidentiality Agreements Amid New EEOC and NLRB Scrutiny

Strafford Publishing Company Webinar
November 4, 2014

Wage & Hour Issues in the Oil Patch

Houston, TX
October 24, 2014

Friday Night Massacres: Employment, Benefits, and Union Issues in Turnarounds

Annual Meeting - Turnaround Management Association, Toronto, Canada
September 30, 2014

Drafting Severance and Confidentiality Agreements Amid New EEOC and NLRB Scrutiny

Strafford Publishing Company Webinar
September 24, 2014

The 2014 Houston Employer Conference

Houston, TX
August 14, 2014

Critical Changes to Mexico and Venezuela's Labor Landscape and the Implications for U.S. Employers

Houston, TX
January 29, 2013

Business or Pleasure: The Challenges of “Bring Your Own Device” (BYOD) Policies in the Workplace

Littler Mendelson, Houston, TX

August 2, 2012

The 2012 Houston Employer Conference

Houston, TX

August 2, 2012

Successful Project Management for In-House Counsel

Littler Mendelson, Scottsdale, AZ

May 9, 2012

Cross-Border Employment – Understanding the Legal Challenges of Managing a Global Workforce

Global HR Business Education Conference

October 2011

Recent Developments in FLSA Collective Actions

Employment Law Committee - Houston Bar Association

October 2011

The 2011 Houston Employer Conference

Houston, TX

August 11, 2011

Ethics in Employment

Great American Insurance Company

2011

Using Serengeti Tracker - More Than a Matter Management Tool

Houston, TX

March 4, 2010

Alternative Fee Arrangements for Law Firms and Corporate Law Departments

Strafford Publishing Company Webinar

2010

Day-to-Day Management and Implementation of Global Policies

Employment and Industrial Relations Law Committee - International Bar Association, New Delhi, India

2010

Matter Management Systems

Association of Corporate Counsel, Houston Chapter, Houston, TX
2010

Religion in the Workplace

Priority Associates Luncheon Presentation, Houston Chapter, Houston, TX
2007-2010

Information Management in the Digital Age

Houston, TX
September 23, 2009

Reductions in Force

Houston, TX
March 12, 2009

Relationship Management with Outside Counsel

Association of Corporate Counsel, Houston Chapter Webinar, Houston, TX
2009

Settlement and Severance Agreements

University of Houston Advanced Employment Law, Houston and Dallas, TX
2009

RIFs, the Puzzle, the Process, the Alternatives

The Woodlands Bar Association, The Woodlands
2009

Alternative Billing: How to Implement Sustainable Programs for the Long Run

West Legal Education Center Webinar
2009

Information Management in the Digital Age

Association of Corporate Counsel, Houston Chapter, Houston, TX
2009

Basics for Reductions-in-Force

2009 Employment Institute - Houston Bar Association, Houston, TX
2009

Settlement and Severance Agreements

University of Houston Advanced Employment Law, Houston, TX
2008

Company Under Siege: Labor & Employment Issues Facing Troubled Companies

Labor and Employment Committee Luncheon - Houston Bar Association, Houston, TX
2008

Voir Dire Demonstration

Houston Bar Association Labor and Employment Institute
2006

Preparing to Win At Trial: A View from Both Sides

Labor and Employment Committee Luncheon - Houston Bar Association, Houston, TX
2006

Dialogue on the American Jury

Bellaire High School, Houston, TX
2006

Managing Difficult Return to Work Issues

Council on Education in Management, Houston, TX
2005

Harassment and Discrimination

Gevity, Houston, TX
2005

Complying with the HIPAA Privacy Rules: What you Need to Know

Petroleum Equipment Suppliers Association (PESA), Houston, TX
2004

Employee Classifications in the 21st Century: Compliance with the New USDOL White Collar Exemptions

Gevity and various local chambers of commerce
2004

Employee Classifications in the 21st Century: Compliance with the New USDOL White Collar Exemptions

Right Consultants HR Roundtable, Houston, TX
2004

Hiring and Firing in Texas

Sterling Education Services, LLC, Houston, TX
2003

Workplace Privacy

Rio Grande Valley SHRM, Brownsville, TX
2003

Update on Privacy and Emerging Issues in Electronic Workplace Litigation: Policies and Practices to Safeguard Your Organization

Council on Education in Management
2003

Non-Disclosure, Non-Competition, and Non-Solicitation Agreements: Ethical Lifeboats for Lawyers and Landmen When Jumping Ship

Rocky Mountain Mineral Law Foundation Institute, Lake Tahoe
2002

Employment Aspects of Corporate Due Diligence

Conducting Bulletproof Due Diligence Seminar - Fulcrum Information Services Inc., Houston, TX
2001

The Digital Employer

Right Consultants HR Roundtable, Houston, TX
2001

The Digital Employer

Enron Wholesale Markets Law Conference, The Woodlands
2000

Ethics Panel

Mid-Year Meeting, Equal Opportunity Committee, Labor and Employment Law Section - American Bar Association, Tucson, AZ
2000

Sexually Addictive Disorders And The Employer

National Institute On The ADA - American Bar Association (ABA), Chicago, IL
1999

Ethics in Employment Cases

Mid-Year Meeting, Equal Opportunity Committee, Labor and Employment Law Section - American Bar Association, Boca Raton, FL
1999

Mock Trial of Workplace Privacy Case

Annual Meeting - American Bar Association, Toronto, Canada
1998

Ethics in Sexual Harassment Cases

National Institute on Sexual Harassment - American Bar Association (ABA), Washington, D.C.
1998

Ethics in Employment

Labor and Employment Section - Houston Bar Association, Houston, TX
1998

Ethics in Sexual Harassment Cases

National Institute on Sexual Harassment - American Bar Association (ABA), Chicago, IL
1997

Workplace Violence

Council on Education in Management, Houston, TX
1996

Employment Practices Liability Insurance

Risk and Insurance Management Society, Inc.
1996

Insurance Coverage of Employment Disputes

Annual Meeting - American Bar Association, Chicago, IL
1995

Employing the Mentally Disabled: A Guide to Avoiding Liability Under the Americans with Disabilities Act

Annual Meeting - American Bar Association, New Orleans, LA
1994

Workplace Violence

Council on Education in Management, Houston, TX
1994

Terminating Employees Without Being Sued Under Texas Law

The Cambridge Institute, Dallas and Houston, TX
1993

Establishing Essential Job Functions and Understanding the Selection Process Criteria under the Americans with Disabilities Act

South Texas College of Law, Houston, TX
1992

Terminating Employees Without Being Sued Under Texas Law

The Cambridge Institute, Austin and Houston, TX
1992

Recent Developments in Race and Sex Discrimination

University of Houston Law Center, San Antonio, TX
1991

Employment Law

Texas Association of Steel Importers, Houston, TX
1991

Employment Law

National Association of Credit Managers
1991

Employment Litigation, Advanced Litigation Seminar

University of Houston Law Center, Houston and Dallas, TX
1991

Remedies and the Court's Charge in Labor and Employment Cases

South Texas College of Law - Houston Bar Association, Houston, TX
1991

Health Issues, The Workplace and the Law

Council on Education in Management
1990

Recent Supreme Court Decisions on Race and Sex Discrimination

University of Houston Law Center, Houston, TX
1990

The Safe and Efficient Workplace, How to Deal with Drug and Alcohol Abuse

Bryan/College Station Small Business Development Council
1990

Workplace Disability Laws, Occupational Medicine for the Practicing Physician

Baylor College of Medicine
1989

Discrimination Law Update

South Texas College of Law
1988

Expanding Issues of Privacy in Employment

South Texas College of Law
1988

Age, Pregnancy and Handicap Discrimination

University of Houston Law Center
1985

Recent Developments in Traditional Labor Law

South Texas College of Law
1984

Numerous firm seminars, conferences, and breakfast briefings on all aspects of employment law

Books & Book Chapters

- *Emotional Injury and Employment Causes of Action, The Practitioner's Guide to Defense of EPL Claims, 4th ed., Chapter 7, Editor, Wilson, ABA/TIPS, 2018*
- *Employment Law Trials: A Practical Guide, Lexis/Nexis, 2005*
- *Fundamentals of Employment Law, Co-authors: Ford and Hill, ABA/TIPS, 2000*
- *Guide to Equal Employment Practices, Co-author: McCandless, Warren Gorham & Lamont, RIA Group, 1997, Chapter 2, Race, Sex and National Origin; Chapter 6, Equal Pay; Chapter 9, Sections 2 (pregnancy, childbirth, and related conditions), 3 (marital and family status), and 9 (reverse discrimination and seniority); Chapter 14, Equal and Consistent Treatment*
- *Littler on Bankruptcy & Employment Law Issues, Littler National Employer Library*