

firm overview

Crowell & Moring is a nationally recognized, full-service law firm with offices in Washington, Brussels, London, New York, and California. We are internationally known for our world-class Government Contracts practice, in addition to our leading practices in Antitrust, Labor and Employment, Litigation, and Intellectual Property. With more than 400 attorneys, we represent major businesses, governments, and other organizations in major litigation, complex regulatory and administrative matters, and government and internal investigations.

Crowell & Moring's lawyers are both counselors and litigators. We regularly advise our clients on the wide range of issues that result from their business activities, and we regularly litigate significant cases before administrative agencies, state and federal trial courts, and courts of appeal. Our practices support both national and international clients with a special regulatory focus accentuated by our position in the major business and governmental centers of the U.S. and Europe.



labor and
employment practice



Labor and Employment Practice

Our Labor and Employment practice helps companies and organizations meet the challenges of the modern workplace, both in the United States and in Europe. Our experience spans a wide spectrum, from handling complex class and individual employment litigation and providing advice on routine employment law issues, to helping address complicated labor and privacy problems.

In the U.S., we have developed a national reputation for handling a variety of traditional labor law matters, such as collective bargaining, grievance arbitration, union organizing and corporate campaigns, strikes, picketing, and boycotts. We also have a premier practice representing federal contractors in dealing with the Office of Federal Contract Compliance Programs (OFCCP).

Our lawyers provide advice and litigation representation regarding a variety of employment contract matters, including disputes involving trade secrets, non-competition agreements, and executive compensation. Additionally, we help employers draft and implement personnel policies and procedures that both comply with applicable law and meet the clients' business objectives. We represent our clients in individual and class actions alleging employment discrimination and/or violations of the Fair Labor Standards Act (FLSA) and wage payment statutes.

We help clients develop policies to maintain compliance with federal and state employment laws. We provide training for managers and supervisors in diversity and Equal Employment Opportunity (EEO) compliance issues. We also have designed and implemented effective sexual harassment training programs and other training programs targeting high-risk employment matters, such as qui tam and other whistleblower actions. We have extensive experience collaborating with our clients as they design corporate restructuring efforts, including planning for reductions in force.

We provide our clients with sophisticated and practical answers to compliance questions arising under the full range of federal and state employment laws. Some of the many areas in which we assist employers in the U.S. and around the world can be found on the pages that follow.

employment discrimination counseling & litigation



Crowell & Moring represents employers in both individual and class action discrimination litigation in the federal trial and appellate courts, state courts, the Equal Employment Opportunity Commission, and related federal, state, and local governmental agencies. These cases involve disparate treatment and impact claims and span the full range of protected categories, including race, sex, age, disability, veteran status, national origin, and religion. Our experience before the EEOC includes litigation of both “Commissioner” and individual discrimination charges as well as related investigations of employee claims, including claims of sexual harassment, wrongful discharge, retaliation, and disability discrimination. Our diverse team of employment litigators has a long and proven record of success, both in bench trials and before juries.

Our lawyers regularly advise clients — from Fortune 100 companies to start-ups — on how to minimize the risk of workplace discrimination claims through proactive planning. Among the unique services we provide are class action “avoidance” and OFCCP/affirmative action compliance services, which include detailed compensation and data analyses to identify hidden statistical vulnerabilities, interviews of company personnel to gauge employee morale and satisfaction with diversity efforts, and concrete recommendations to address areas of vulnerability. We frequently team with leading statisticians to assess complex compensation and performance management systems and their results. This work includes the development and refinement of regression models, designed to identify the extent to which any employee groups are disadvantaged by employer systems.

We have special expertise dealing with sexual harassment issues. We prepare sexual harassment policies tailored to the needs of specific clients. We conduct independent investigations of allegations of sexual harassment made against executives and managers, and provide guidance on responding to such complaints in an effective manner.



Our attorneys are litigators and trial lawyers who begin every case with the end in mind and have the skill and experience to handle matters from the first complaint through jury trials and final appeals. We handle employment litigation disputes in virtually every area of the law and in virtually every type of tribunal across the country.

- We serve as employment litigation counsel for a client with nationwide operations, litigating employment cases in state and federal courts across the country. For this client, we maintain a docket of approximately 25 to 30 cases at all times, ranging from class actions to single plaintiff matters involving the full range of employment laws.
- Our lawyers serve as employment litigation counsel for the corporate parent of eight hospitals and other related entities located in Maryland and the District of Columbia. We represent this client in cases in state and federal court, maintaining an active docket of 15 to 20 cases. We recently successfully represented this client in a landmark District of Columbia Court of Appeals case holding that in an action for pay discrimination under the DC Human Rights Act, each paycheck is a discrete act and starts a new statute of limitations period.
- We conducted training for all direct reports to the CEO of a large healthcare provider, and then to all senior staff at the director level, regarding high-risk areas that were revealed in connection with an investigation of alleged retaliation by senior executives. The training spanned a number of topics, including whistleblower retaliation and the litigation impact of decision making by e-mail.

wage and hour compliance and litigation

Our wage and hour practice likewise covers the full gamut of state and federal issues relating to payment of wages and classification of employees. We represent clients in connection with FLSA class and collective actions, as well as class actions arising under state wage payment laws. We regularly advise clients on their compliance with the employee classification scheme mandated by the FLSA and perform compliance audits, in advance of litigation or governmental investigations. We also assist clients whose workforces include contingent workers to ensure that employees and independent contractors are classified correctly. Our representations in this arena also extend to investigations conducted by the Wage & Hour office of the Department of Labor.

- We are currently handling several wage and hour class actions filed in California and other states. Our clients in these matters range from a global telecommunications company to a nationwide security company.
- Our lawyers conducted an FLSA audit of a client's operations at multiple sites following allegations of improper classification of employees and failure to pay overtime at a single site. As a result of the audit, our client modified some of the employee classifications and has received no subsequent challenges to the classifications.



employment contracts and protection of trade secrets

We collaborate with our clients to ensure the protection of their trade secrets and proprietary business information through preparation of non-competition, non-solicitation, and confidentiality agreements tailored specifically for their workplaces and the jurisdictions in which they operate. We draft employment agreements for senior executives and managers, as well as executive compensation agreements. We have extensive experience litigating disputes concerning these matters.

Our attorneys are also experienced in representing corporate clients in counseling and litigation involving disputes arising under employment contracts and senior executive severance agreements. Our lawyers have represented both regional and national corporations in litigation over a variety of trade secrets and non-compete issues, including pursuing actions against former employees under the Computer Fraud and Abuse Act (CFAA).

We frequently defend and prosecute actions for emergency injunctive relief based on alleged violations of non-competition and non-solicitation agreements, employee raiding, and misappropriation of trade secrets. In the last year alone, we secured several court victories for our clients and successfully resolved others on the eve of litigation.

- We filed CFAA and state law claims against a former senior-level employee of a large healthcare client after learning that the former employee had persuaded a then current administrative employee to e-mail highly confidential and proprietary documents, including contract proposals, to him after his departure. The matter was settled when the former employee agreed not to compete for certain contracts for a one-year period, agreed to return all client documents and related documents, and agreed to a complete forensic analysis of his computers. Upon completion of the forensic analysis, the former employee was required to permanently delete all remaining copies of any client documents or any documents he had created based on the client documents.
- We successfully overturned a state court temporary restraining order that was entered ex parte against a client and its recently hired employees, precluding the employees from working on a federal contract. The employees' former employer asserted that our client's recently hired employees had violated their non-compete agreements and breached their duty of loyalty. The court, reconsidering the TRO and motion for a preliminary injunction, ultimately found that a TRO and injunction were not warranted, based on the language of the non-compete agreements and affidavits submitted by our client.
- We defeated a former employee's claim that our client wrongfully withheld certain payments after the former employee violated a restrictive covenant in his stock agreement. The court held the worldwide restrictive covenant, prepared by our lawyers, was reasonable in the circumstances and entered summary judgment on our counterclaim for repayment of certain sums that had been paid to the employee.



ERISA and employee benefits litigation

We represent companies in both counseling and litigation of issues concerning the design and administration of employee welfare benefit plans, including health insurance and severance plans. We have extensive experience in handling disputes concerning retiree medical benefit plans. In conjunction with Crowell & Moring's tax and employee benefits lawyers, we draft qualified pension, profit-sharing, thrift, stock, ESOP, and 401(k) plans, and non-qualified executive deferred compensation and supplemental benefit programs.

Our lawyers have particular expertise in litigating federal law preemption issues and disputes concerning administration of Employee Retirement Income Security Act (ERISA) plans. We have extensive experience in disputes concerning ERISA's fiduciary duty requirements, prohibited transaction rules, and MPPAA withdrawal liability issues.

- We represent a management consulting firm in one of only seven employment cases slated for decision by the Supreme Court in the 2007-08 term. The case involves a claim for breach of the fiduciary duty rules contained in ERISA filed by a former employee and participant in a 401(k) plan administered and sponsored by our client. Our client prevailed in both the trial court and in the U.S. Court of Appeals for the Fourth Circuit, with both courts holding that ERISA's civil enforcement provisions do not permit recovery of compensatory damages in these circumstances.
- We represented the United States Chamber of Commerce in a successful challenge to a county ordinance mandating the payment of prevailing wages on strictly private construction contracts. The district court found in favor of our client on both National Labor Relations Act (NLRA) preemption and ERISA preemption grounds. The Ninth Circuit affirmed, reaching decision only on the ERISA preemption theory.



labor-management relations and labor disputes

We offer our clients a unique depth and breadth of experience in traditional labor law. We represent clients in the full range of matters arising under the National Labor Relations Act, as well as the Railway Labor Act (RLA), and we have a national reputation for creative and effective representation of employers, whether responding to organizing campaigns or structuring various corporate transactions (mergers, acquisitions or sales) involving organized workforces in order to maximize the value and flexibility sought in the transaction.

- We have extensive experience handling complex labor disputes for companies in a wide range of industries, from sophisticated NLRB and RLA litigation to the full spectrum of labor litigation in federal and state courts. We represent unionized employers in collective bargaining negotiations and contract administration and we have extensive experience in grievance arbitration. Our lawyers have assisted several major corporations in developing and implementing strategies to deal successfully with strike situations, and have been frequently involved in labor law preemption matters, successfully asserting federal labor law preemption of state actions that interfered with the collective bargaining process.
- We regularly represent a transportation company in its collective bargaining with a single, nationwide bargaining unit, and in important contract interpretation arbitrations arising under the contract.
- Our lawyers represented a global company in an investigation by a United States Attorney's office and the Department of Labor into alleged unlawful payments to union officials under Section 302 of the Taft-Hartley Act. While the investigation was pending and after it was closed without indictment, we audited union officer pay practices at facilities nationwide and assisted the company in implementing enhanced accountability measures.
- We represented a client in the due diligence phase of a transaction involving a target company that had executed neutrality agreements with several unions and assessed the potential post-transaction exposure arising from those agreements.



affirmative action compliance and OFCCP audits



With many of our clients serving as government contractors or subcontractors, our Labor and Employment group has developed a preeminent affirmative action compliance team. Our client representations in this area run the gamut from helping new federal contractors or subcontractors set up their initial affirmative action plans (AAPs) and associated tracking mechanisms, to representing clients who are being audited by the OFCCP and developing comments to proposed regulations on behalf of the U.S. Chamber of Commerce. We have developed a custom database program for preparing AAPs in a cost-effective manner for our clients, from small contractors who prepare a single AAP each year to multinational corporations who prepare dozens each year. For large contractors, we often team with labor economists to develop regression models for analyzing compensation and other personnel actions that are subject to audit by the OFCCP.

- Our lawyers were hired while a “glass ceiling” or corporate management review was pending at a company that we had not previously represented. Our representation of this company began just after the OFCCP had requested individualized compensation data on all employees at the contractor’s headquarters facility. Within six months, the audit was closed with no findings of violation and without a conciliation agreement.
- A client we represented in another glass ceiling review was selected for an EVE Award by the OFCCP after the glass ceiling review was closed.
- We prepare dozens of AAPs for various clients on an annual basis across a number of industries, which include “functional AAPs” and site-specific AAPs.



WASHINGTON, DC

1001 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004-2595
P +1.202.624.2500
F +1.202.628.5116

CALIFORNIA

3 PARK PLAZA, 20TH FLOOR
IRVINE, CA 92614-8505
P +1.949.263.8400
F +1.949.263.8414

NEW YORK

153 EAST 53RD STREET, 31ST FLOOR
NEW YORK, NY 10022-4611
P +1.212.223.4000
F +1.212.223.4134

LONDON

11 PILGRIM STREET
LONDON, UNITED KINGDOM EC4V 6RN
P +44(0)20.7413.0011
F +44(0)20.7413.0333

BRUSSELS

71, RUE ROYALE
B-1000 BRUSSELS, BELGIUM
P +32.2.282.40.82
F +32.2.230.63.99

WWW.CROWELL.COM