



## LABOR AND EMPLOYMENT

**Navigating the hundreds of state and federal laws that govern the employee-employer relationship can be fraught with peril. No business should do it alone. With deep experience in numerous industries that have their own unique challenges, the Bell Nunnally employment team helps guide clients through this complex landscape.**

From issues of executive mobility to employment policies and claims of misconduct, our experienced attorneys assist business owners in managing the day-to-day maze of laws governing the workplace. Recognizing that employment problems can, and frequently do, turn into lawsuits, our employment lawyers also bring considerable courtroom prowess as zealous advocates protecting clients' interests.

Whether providing advice on a sticky personnel matter, setting up a company's policies and procedures handbook or defending a collective-action overtime wage lawsuit with hundreds of claimants, our deep experience in state and federal employment matters help clients to mitigate the risk associated with their most important company asset – their people.

Our work includes providing advice and counsel, developing policies and procedures, ongoing compliance and litigation involving:

- Title VII of the Civil Rights Act of 1964
- Section 1981
- Age Discrimination in Employment Act (ADEA)
- Texas Commission on Human Rights Act
- Texas Labor Code and other federal and state laws
- Americans with Disabilities Act (ADA)

- Family and Medical Leave Act (FMLA)
- Occupational Safety and Health Act (OSHA)
- Older Workers Benefit Protection Act (OWBPA)
- Pregnancy Discrimination Act (PDA)
- Equal Pay Act
- Genetic Information Nondiscrimination Act (GINA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Fair Labor Standards Act (FLSA)
- Texas Payday Act

## Administrative Charges and Investigations

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When an organization is investigated by a state agency or the federal government, experience is essential to navigating the process. Organizations facing an audit or investigation must manage this process, pitted against investigators whose singular focus is enforcing their agency's laws every day.

- Representation of clients before the Department of Labor (DOL) and the National Labor Relations Board (NLRB).
- Charges for discrimination, harassment and retaliation filed with the Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission (TWC).
- Audits before the DOL involving wage and hour claims and other claimed violations of the Fair Labor Standards Act (FLSA).
- Charges before the DOL involving enforcement of Title III of the Americans with Disabilities Act (ADA) for failure to accommodate individuals with disabilities.
- Charges before the National Labor Relations Board (NLRB), involving claims against private employers for violation of the National Labor Relations Act (NLRA), as well as claims involving union organization, picketing, strikes and unfair labor practices.

## Class Action Defense

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Class and collective action lawsuits can be daunting due to the sheer volume of litigants and the potential financial and public relations exposure. Consequently, it is imperative for employers facing these challenges to utilize the strength and resources of an experienced team.

- Litigated both class and collective action lawsuits in many jurisdictions.
- Lawsuits initiated by the federal government
- Suits with private plaintiffs numbering in the hundreds or thousands.

## Employee Handbooks and Policies

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Having plans and policies on how to handle employment issues is one step towards protecting a business from unnecessary exposure and risk. Another step is communicating business plans and policies to employees in an understandable manner. Having an updated and legally accurate employee handbook with policies addressing everything from leaves of absences to substance abuse is essential to any business. Crafting an effective handbook is a complex task, especially for business operating in multiple states. We regularly work with business owners, human resources professionals and other company representatives to draft custom employee handbooks that are appropriate for each business and comply with the latest laws and regulations.

## Employment Arbitration and Litigation

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- Represented Dillard's against claims of discrimination based on gender (Title VII of the Civil Rights Act), disability (the Americans with Disabilities Act) and retaliation under ERISA. After a three-day arbitration, the claimant received a take nothing verdict.
- Secured a take nothing defense verdict representing Dillard's in a two-day arbitration against claims of age and disability discrimination under the Texas Labor Code.
- Represented Dillard's in a discrimination lawsuit. The plaintiffs' claims were dismissed by the court on summary judgement.
- Represented Workrise Inc. and HCS Renewable Energy, Inc. in a discrimination lawsuit brought by three former employees of HCS, a staffing company in the renewable energy sector. After filing a motion for summary judgement, the court dismissed all claims in favor of the defendants.

## Employment Claims and Litigation — Discrimination, Harassment and Retaliation

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Our team has experience defending against claims of workplace discrimination, harassment and retaliation under federal and state laws in multiple jurisdictions. We help clients prepare responses to agency and administrative proceedings, witness interviews, site inspections and document requests, as well as prelitigation mediation. Should a case go to trial, we vigorously represent our clients in litigation — from single-plaintiff to class-action cases brought by retained counsel or by the EEOC or Department of Labor. We represent clients in arbitration and at jury trials in federal and state court, in matters including:

- Sex, age, race, national origin, disability, religious and sexual orientation discrimination and harassment
- Retaliation
- Family Medical Leave Act (FMLA) interference and retaliation
- Failure to provide reasonable accommodations under the Americans with Disabilities Act
- Equal Pay Act
- Workers' compensation retaliation
- Defamation
- Intentional infliction of emotional distress
- Invasion of privacy
- Whistleblower

## ERISA, Nonsubscriber Defense and Benefit Plans

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We advise clients on the creation and management of ERISA compliant welfare benefit plans. Our team also represents clients in litigation that arises associated with the management of ERISA based benefit plans.

Texas is the only state in the country that allows employers to exit the workers compensation system and create their own ERISA-based benefit plan to cover workplace injuries. Our team is a leader in representing companies that opt out of the Texas Workers Compensation Act. These nonsubscriber plans allow employers to manage their work injuries in a way that mirrors their corporate culture. Using our playbook, Bell Nunnally's employment team has helped companies of all sizes, from Fortune 500 concerns to blue ribbon regional corporations.

In addition to creating an ERISA-compliant nonsubscriber program, our team also provides ongoing advice and counsel on program management, claims handling and the appeals processes. Our litigation team provides legal defense for our nonsubscribing clients on all claims associated with nonsubscription, such as alleged violations of ERISA in the claims management process or negligence claims involving work related injuries.

## Immigration

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Attempting to navigate the complexities of U.S. immigration law can have severe consequences if done alone or without the proper experience and skill. We handle all types of employment-based immigration matters including nonimmigrant visas, permanent residency (green card) and U.S. Citizenship, as well as representation of enforcement actions and workplace compliance audits. We invite you to explore the firm's [Immigration Practice page](#) for a more detailed description of our work in this area.

## Labor Disputes

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Our team provides a broad range of services to assist employers dealing with unionized workforces, union organizational efforts and labor disputes, including:

- Assisting employers faced with union organizational efforts
- Defense of charges alleging unfair labor practices under the National Labor Relations Act (NLRA)
- Filing ULPs against unions and their agents for violations of section 8(b) of the NLRA
- Responding to OSHA citations
- Defense of non-union claims of concerted activity and retaliatory discharge
- Defense of enforcement actions before the NLRB
- Appeals of adverse ALJ determinations
- Review of employee handbook provisions involving concerted activity
- Drafting enforceable anti-solicitation and distribution policies
- Prosecution of actions for injunctive relief and damages against rogue union activity
- Prosecution of defamation claims based on false statements made during union organization efforts
- Negotiation of collective bargaining agreements
- Union decertification efforts



- Labor disputes with unionized employees, including under the Railway Labor Act and the National Labor Relations Act.

## Layoffs and Reductions In Force

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When an employer decides to eliminate part of its workforce, it can present legal risk and cause stress within an organization. Bell Nunnally partners with companies to carefully plan and execute workforce reductions to help minimize legal risk and lessen the negative impact on employee morale. We advise regarding:

- Downsizing
- Alternatives to reductions in force or layoffs
- Compliance with laws governing workforce reductions, including the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA)
- Worker Adjustment and Retraining Notification Act (WARN Act) compliance
- Internal and external messaging to help companies remain true to their culture and values throughout the process

## Noncompete Agreements and Executive Employment Agreements

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In today's highly mobile business environment, we help clients protect their competitive positions, invariably built upon goodwill, trade secrets and other proprietary information. When an executive departs a business and attempts to utilize its trade secrets and goodwill on behalf of a competitor, we move to preserve those assets quickly and decisively.

We draft executive employment agreements with strong noncompete, nondisclosure and nonsolicitation clauses upon hiring specifically tailored to safeguard businesses against unfair competition. When a departing employee violates the terms of such an agreement, we help protect our client's position, seeking restraining orders and temporary and permanent injunctions, as well as filing lawsuits to recover damages from bad behavior, such as trade secret misappropriation.

Additionally, we help our clients navigate through the many issues that arise when they hire an executive who has a noncompete with a previous employer, including finding solutions without litigation and strategies for putting our clients in a strong position if litigation does ensue.

## Public Accommodation - Fair Housing Act and Americans with Disabilities Act

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Experienced defending and counseling clients that face challenges presented by Title III of the Americans with Disabilities Act (ADA), the Fair Housing Act and other disability access laws, we focus on finding practical and cost-effective solutions for compliance with disability access laws, including:

- Defending website accessibility litigation brought by blind, visually impaired and manually impaired internet users and related preventative counseling.
- Defending litigation related to architectural barriers, including parking, seating, restrooms and reservations policies and related advice.
- Representing housing providers against claims related to accessibility in private and public housing, including both architectural compliance and providing reasonable accommodations to disabled tenants and applicants.
- Training managers and employees on policies and best practices for contact with customers, patients and guests with disabilities.

## Public Employers

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In addition to our work with private employers, we have defended public entities in claims involving allegations of deprivation of civil rights and First Amendment issues, procedural and substantive due process, sovereign immunity, and immunity of public officials sued in their official and individual capacities.

## Risk Management/HR Advice and Counsel

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Our team provides practical business advice to employers navigating the myriad of laws that govern the employer-employee relationship. We provide day-to-day strategic advice and counseling regarding the legal and business risk that could arise under federal and states labor and employment laws as they navigate:

- Difficult terminations
- Leaves of absence
- Disability accommodations
- Religious accommodations

- Performance management
- Progressive discipline
- Reductions in force
- Wage calculations
- Workplace violence
- Whistleblower litigation
- Employee privacy issues
- Negligent hiring, retention, supervision or assignment
- Workers' compensation retaliation or discrimination

### **Policies, Handbooks and Agreements**

Bell Nunnally employment attorneys work to mitigate risk for clients through proper preparation of employment policies and handbooks, as well as various employment agreements, including independent contractor, arbitration, separation and severance agreements. Our team reviews employment applications and hiring processes to ensure compliance with the latest state and federal employment laws.

### **Training**

Effective workplace training reduces risk of employment-based claims. From sexual harassment, corporate culture, harassment and discrimination to navigating a leave of absence, our experienced litigators use their experience to train companies and avoid legal pitfalls.

### **Deal Support**

Our team also partners with in-house legal counsel and human resources departments through mergers and acquisitions, providing strategic advice on how to avoid litigation and employment risk where possible.

## **Trade Secret Protection and Prosecution**

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Trade secrets and confidential information give companies their competitive edge. Valuable assets, they can involve proprietary pricing strategies or methods, carefully cultivated client relationship management (CRM) databases or customized customer lists, secret manufacturing methods, secret recipes and competitive strategies, among other things. We have experience drafting policies, procedures, handbooks and confidentiality agreements to protect these assets.

When a current or former employee puts a company's competitive edge into jeopardy, we defend their trade secrets, regularly seeking emergency injunctive relief to prevent the improper use or disclosure of that information. We also counsel companies on legitimate and legally compliant reverse engineering efforts and appropriate procedures for exiting a relationship to avoid creating a trade secret dispute. To learn more about how we help clients protect their intellectual capital, we encourage you to check out the [Intellectual Property Practice page](#) on our website.

## Wage and Hour Law

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We regularly advise employers on federal and state wage and hour laws, which include regulations that often vary by jurisdiction on areas such as overtime pay and calculations, payment of the minimum wage, the employer-employee relationship and classification of independent contractors. The U.S. Department of Labor has estimated that 80 percent of employers are not in full compliance with all applicable wage and hour laws. As such, businesses are faced with an increased risk of a wage and hour lawsuit, and these cases will likely continue to be a source of significant exposure.

### **Compliance and Training**

Our work includes both compliance and defense of legal actions. We help clients develop legally compliant compensation and pay policies that conform to equal pay laws and offer training and counseling for management and supervisors in an effort to help clients avoid statutory violations and legal claims related to wage and hour compliance. Some clients request a periodic review of their policies and procedures to ensure continued compliance with this ever-changing field of law. We provide wage and hour audits and review pay policies and actual practices, including review of employees and independent contractors to determine proper classification and whether they are exempt from the overtime requirements of the Fair Labor Standards Act.

### **Wage and Hour Claims and Litigation**

When claims of wage and hour violations arise, our attorneys defend employers against allegations of unlawful pay practices, and we have experience representing employers in wage and hour investigations by the Department of Labor and the Texas Workforce Commission. While wage and hour claims can be brought by a single employee, they often occur as class or collective actions. No matter the scale, our experienced team is prepared for the fight.

## Workplace Culture and Misconduct Investigations

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Working with clients on issues of workplace culture, our team helps companies identify compliance gaps and emerging concerns and expediently – but judiciously – investigates and providing counsel aimed at strengthening internal controls. This dual focus combines expertise from our labor and employment and white-collar defense attorneys. Our work includes:



- **Workplace Audits:** Conducting workplace audits to uncover unmet legal requirements
- **Staff Training & Compliance:** Ensuring that companies and employees, alike, understand the latest legal developments and expectations regarding appropriate workplace behavior
- **Systems Evaluation:** Evaluating the efficacy of current systems, such as dedicated “hotlines” and complaint procedures
- **Internal Investigations:** Reviewing internal practices and procedures around areas such as hiring and firing or misconduct allegations
- **Contract Review:** Reviewing relevant contract language for senior executives and insurance coverage for outside board members
- **Communication Protocols:** Confirming that appropriate communications protocols for reporting workplace issues are available and followed, including ensuring that all employees are briefed on how to invoke these resources

When allegations of workplace misconduct arise — sexual harassment, discrimination, bullying, embezzlement, self-dealing or otherwise — our attorneys can conduct thorough internal investigations and provide needed support to operations, especially human resources professionals. Bringing an “outside perspective” to an internal matter helps clients more clearly understand how to move forward, while carefully crafting internal and external communications, to minimize liabilities.

## Workplace Safety and Health

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Our team provides a range of services to assist employers with workplace safety and health issues, working to ensure employer compliance with applicable federal, state and local laws. Our work in this area includes:

- Preparing for an OSHA inspection
- Negotiating the scope of a potential OSHA investigation
- Assisting with workplace injury reporting and recordkeeping
- Responding to OSHA citations
- Defending claims of willful and repeat citations
- Negotiating resolution of OSHA citations and notices of violation
- Contesting OSHA citations in proceeding before the Occupational Safety & Health Commission
- Defending OSHA retaliation and whistleblower claims

- Reviewing employee handbook safety and injury reporting provisions
- Drafting and review of workplace safety plans

Our attorneys have experience in the defense of citations relating to hazardous conditions, including:

- Scaffolding and fall protection
- Electrical hazards
- Confined space hazards
- Heavy equipment hazards
- Trenching and cave-in hazards
- Failure to train violations
- General duty violations
- Falling object and struck-by hazards
- Crushing hazards
- Asbestos or hazardous materials exposure
- Airborne hazard exposure
- COVID-19 outbreaks, hospitalizations, and fatalities
- Workplace fatalities

## Related Practices

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Appeals

Bankruptcy and Financial Restructuring

Corporate and Securities

Entertainment, Advertising and Media

Immigration

Intellectual Property

Litigation

Mergers and Acquisitions

Tax

White Collar Criminal and Regulatory Defense

## Related Industries

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Agribusiness, Beverage and Food  
Construction  
Energy and Natural Resources  
Financial Services  
Health Care  
Hospitality  
Insurance  
Manufacturing  
Municipalities  
Nonprofits  
Real Estate  
Sports and Entertainment  
Software, Technology and Telecommunications  
Transportation and Logistics  
Wholesale, Retail and Services

## Related Attorneys

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Alana K. Ackels  
Katie Beaird  
Thomas L. Case  
R. Heath Cheek  
Nathan Cox  
Andrew Dowdy  
Joshua D. Fuller  
Troy "T.J." Hales  
Dylan T. Hughes  
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Taylor Montgomery  
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