



## Kenneth A. Weber

Shareholder

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Kenneth Weber has devoted his legal career to helping employers manage their workplace liabilities.

For more than 20 years, Mr. Weber has defended employers of all sizes in disputes ranging from wage and hour, unfair competition and trade secret protection, to discrimination and harassment charges, retaliation and whistleblower suits, and employment contract disputes. He has participated in over 50 trials and injunction hearings, including numerous jury trials as first chair.

Mr. Weber also regularly counsels employers on litigation avoidance and compliance strategies, provides general employment law advice and training, drafts employment contracts and policies, and represents employers in Department of Labor and EEOC investigations.

Mr. Weber's wage and hour experience includes counseling employers, managing wage and hour audits, and defending numerous FLSA collective actions and state law class actions.

Mr. Weber devotes a large part of his practice to representing employers and executives in unfair competition disputes, including non-compete, non-solicit and non-disclosure agreements, trade secret protection, breaches of fiduciary and loyalty duties, and business torts. He also regularly counsels employers and executives in this high-stakes area of law.

Mr. Weber's ERISA litigation experience includes defending institutional plan/claim administrators and employers in disputes involving benefit denials, breach of fiduciary duties, and related claims.

## Representative Matters

### Wage & Hour: Donning and Doffing Cases

- Defended a federal court lawsuit in which employees of a meat packing plant sued under federal and state law to recover unpaid wages and overtime related to pre-shift, post-shift and meal period activities. The case was conditionally certified as an FLSA collective action (1500 plaintiffs) and certified as a Rule 23 class action (6700 plaintiffs), fully litigated, and settled on favorable terms within days of trial.
- Defended a federal court lawsuit in which employees at a salad dressing plant brought claims under federal and state law to recover unpaid wages and overtime related to pre-shift, post-shift and meal period activities. Plaintiffs' FLSA were conditionally certified as a collective action and the case settled on favorable terms after a period of discovery.
- Defended a federal court lawsuit in which employees of a chicken processing plant sued to recover unpaid wages and overtime related to pre-shift, post-shift and meal period activities. The case was conditionally certified as an FLSA collective action, assigned to the MDL for discovery and settled in a global settlement of several donning and doffing cases against the defendant employer.
- Defended a federal court lawsuit in which employees of a dairy products plant brought FLSA claims to recover unpaid wages and overtime related to pre-shift, post-shift and meal period activities. The case was settled on favorable terms before notice to the putative class.

- Defended a federal court lawsuit in which call center employees brought FLSA claims to recover unpaid wages related to pre-shift and post-shift activities. The case was conditionally certified and then settled after a period of discovery.
- Defended a federal court lawsuit in which an employee at a meat packing plant brought FLSA claims to recover unpaid wages and overtime related to pre-shift and post-shift activities. The case settled on favorable terms before notice to the putative class.

#### **Wage & Hour: Misclassification Cases**

- Defended a federal court lawsuit in Oakland, California in which underwriters employed by a mortgage loan company brought FLSA claims to recover unpaid overtime on the grounds that they were allegedly misclassified as administrative exempt. The case also involved class action allegations under California law seeking unpaid wages related to meal period and rest breaks. The case settled on favorable terms before notice to the putative class.
- Defended a federal court lawsuit in which insurance claims adjusters employed by an auto and casualty insurance company brought FLSA claims to recover unpaid overtime on the grounds that they were allegedly misclassified as administrative exempt. The case settled on favorable terms before notice to the putative class.
- Defended a federal court lawsuit in Baton Rouge, Louisiana in which an insurance adjuster employed by an auto and casualty insurance company brought FLSA claims to recover unpaid overtime because on the grounds that he was allegedly misclassified as administrative exempt. The case settled on favorable terms before notice to the putative class.
- Defended a federal court lawsuit in which restaurant managers brought FLSA claims to recover unpaid overtime on the grounds that they were misclassified as executive exempt due to the employer's policy of docking their pay for cash shortages and damaged or missing property. The case was conditionally certified and settled after years of litigation.

#### **Wage & Hour: Other Multi-Plaintiff Cases**

- Defended hybrid FLSA/Rule 23 wage claims in federal court in Nashville, Tennessee in which restaurant servers allege they were forced to work off the clock.
- Defended a federal court lawsuit in which restaurant servers alleged they were required to work off the clock. The case settled on favorable terms before notice to the putative class.
- Defended a federal court lawsuit in which hourly employees of a restaurant company brought FLSA claims to recover unpaid overtime, claiming they were required to work off the clock. The case was conditionally certified and then settled after years of litigation.

#### **Unfair Competition and Trade Secret Protection**

- Defended advertising executive from breach of fiduciary duty, misappropriation and unfair competition claims brought by his former employer. The lawsuit settled on favorable terms after three years of litigation.
- Represented an event planning company in litigation against a former key employee to enforce her non-compete, non-solicit and non-disclosure obligations. The case settled on favorable terms after the court entered a preliminary injunction to enforce the restrictive covenants at issue.
- Represented a military defense contractor in litigation against former employees and their new employer on claims of trade secret misappropriation, unfair competition and various business torts. The case settled on favorable terms after entry of a preliminary injunction.
- Successfully defended a national insurance brokerage firm from non-compete and non-solicit claims brought by a competitor after it hired one of the competitor's salesmen. The case settled on favorable terms after the court entered a preliminary injunction and after a short period of discovery.
- Defended former CEO of manufacturing company from non-compete, non-solicit and fiduciary duty claims brought by his former employer. The lawsuit was litigated through trial and neither damages nor injunctive relief was awarded to the adverse party.

## ERISA Litigation

- Defended retirement plan administrator from fiduciary duty claims brought by the plan participants' employer. The federal court granted the retirement plan administrator's motion and dismissed the case.
- Won summary judgment in federal court in favor of a large food processor employer on claims for ERISA interference and wrongful denial of benefits brought by a former employee.
- Won judgment in federal court in favor of physician group employer on claims brought by two physician members for benefits under the employer's severance pay plan.
- Won judgment in federal court in favor of employer/administrator of short term disability plan on breach of fiduciary duty claims brought by former employee.
- Won numerous judgments in favor of claims administrators on long term disability claims in federal courts throughout Tennessee.

## Other

- Defended a major bank in a jury trial on claims for breach of contract and fraud totaling \$4.8 million. The jury awarded the plaintiff only \$600,000.
- Won summary judgment on behalf of a landscaping company in a whistleblower lawsuit brought by a former employee under the Tennessee Public Protection Act.



## Professional Honors & Activities

- Listed in *The Best Lawyers in America*® for Employment Law - Management and Litigation - Labor and Employment since 2011; Litigation - ERISA since 2015
- Named the Best Lawyers® 2021 Litigation - ERISA "Lawyer of the Year" in Nashville
- Listed in *Mid-South Super Lawyers: Employment Litigation Defense* (2011 – 2020)
- Member – Tennessee, Nashville and American Bar Associations
- Member – EEO Committee of the Labor and Employment Law Section of the American Bar Association
- Member – DRI, Employment Law Committee and Life, Health and Disability Committee



## Speaking Engagements

- "Wearing Many Hats: HR, Legal and Corporate Governance: Unique Perspectives From an Executive Who Wears All Three" (June 2023)
- "Don't Be Such a Bully!" (July 2022)
- "Cancel Culture in the Workplace," MTSHRM State Conference (June 2021)
- "Strategies for Responding to Efforts for Conditional or Final Class Certification in FLSA Cases," Class & Collective Action Series Webinar (October 2014)
- "Independent Contractors, Volunteers, Interns, Temporary Staff: When Are They Your Employees?," Middle Tennessee SHRM Legal Workshop (July 2014)
- "Employment Law Trends," Private CLE for client's national HR team (September 2013)
- "Social Media and Smartphones in the Workplace," Transportation Law Institute (November 2012)
- "Hot Topics in Employment Law," Private CLE for client's legal department (September 2012)
- "Mastering the 'White Collar' Exemptions," Tennessee SHRM Conference (September 2012)
- "Social Media in the Workplace – OMG!," Third Thursday L&E Breakfast Briefing (May 2012)
- "Hot Topics in Wage & Hour Compliance and Litigation," Tennessee SHRM Conference (September 2011)
- "Top 10 Ways to Reduce Your Wage & Hour Liability," American Payroll Association, Tennessee Conference (August 2011)



## Education

- University of Tennessee at Knoxville, J.D., 1992

- Middle Tennessee State University, B.S., 1988



## Admissions

- U.S. District Court, Eastern District of Tennessee, 2003
- U.S. Court of Appeals, Sixth Circuit, 1996
- U.S. District Court, Middle District of Tennessee, 1992
- Tennessee, 1992