



## Zachary B. Busey

Shareholder

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Zachary Busey concentrates his practice on class and collective actions, particularly those arising out of the workplace, and assists clients with claims regarding wage and hour issues, restrictive covenants, and discrimination.

Zachary is licensed to practice in Tennessee, Mississippi, and Arkansas. He is a member of the Firm's Labor & Employment Group and the Class & Collective Actions Group. In addition, Zachary is a Certified Information Privacy Professional (CIPP) and a Certified Information Privacy Manager (CIPM), as well as a member of the Firm's Data Protection, Privacy and Cybersecurity Team.

Zachary primarily focuses on class and collective actions, particularly those arising out of the workplace. He has defended collective and class actions involving everything from wage and hour violations and cybersecurity incidents to alleged discrimination and improper background checks. His recent experience includes, among other cases, a nationwide collective action covering more than 65,000 individuals; several nationwide hybrid actions (alleging violations under both state law and the FLSA); enforcement class actions filed by the EEOC; an enforcement collective action filed by the DOL; a nationwide class action alleging racially discriminatory hiring and placement practices; and a nationwide class action following a data breach. He has also negotiated and obtained court approval of collective and class action settlements that, in aggregate, have included more than 100,000 individuals.

The Firm's Data Protection, Privacy and Cybersecurity Team provides advice and counsel on all facets of electronic information management and assists with internal policy creation and training as well as outward facing messages, such as website disclosures and e-commerce platforms. The Team also quickly responds to and provides guidance in the event of a cybersecurity event or data breach. Zachary's focus is often on the litigation that follows, especially when filed on behalf of a class.

Zachary counsels clients on the impact of legalized marijuana, industrial hemp, and extracts from both, such as CBD. His experience covers a number of industries, including construction, banking, health care, and hospitality, and he works regularly with employers to ensure drug testing and other workplace policies remain defensible.

You can follow Zachary on X, [@ZBusey](#), and connect with him on [LinkedIn](#).

### Representative Matters

- Defended individual claims and class actions following data breaches and cybersecurity incidents.
- Prevented class certification and obtained dismissal of class claims in nationwide race discrimination class action.
- Avoided conditional and class certification and obtained dismissal of claims in nationwide hybrid action.
- Decertified a nationwide collective of current and former employees alleging "off the clock" and misclassification violations under the Fair Labor Standards Act.
- Conducted internal compliance audits related to payroll practices, workforce classification, immigration compliance, and data/information security.

- Implemented arbitration programs and agreements for multi-state employers that reduce, if not eliminate, multi-party, collective, and class litigation.
- Following a finding of religious discrimination by the EEOC, obtained dismissal of federal lawsuit brought by former employee against national restaurant chain and obtained a complete defense verdict in subsequent arbitration proceedings.
- Obtained summary judgment in enforcement action brought by the EEOC against regional petroleum distributor involving claims of same-sex, gender-stereotyping discrimination and Title VII retaliation.
- Obtained partial summary judgment in enforcement action brought by the EEOC against national health care provider involving claims of disability discrimination and failing to accommodate a former employee's alleged disability under the Americans with Disabilities Act.
- Obtained injunctions and protective orders prohibiting public entities from disclosing clients' data and information in response to requests under the Mississippi Public Records Act and Freedom of Information Act.
- Obtained and defeated injunctions and other emergency relief related to the enforcement of restrictive covenants, including non-compete and non-solicitation covenants.
- Overcame objections based on the Stored Communications Act and obtained both content and non-content information from Facebook and other electronic communication service providers.
- Advised cannabis retailers on point-of-sale issues and concerns, marketing and advertising, online versus brick-and-mortar sales, as well as shipping and delivery, both within the client (e.g., internal distribution networks) and externally with respect to end users/purchasers.
- Advised farmers and agricultural clients on qualifying as a licensed/regulated cannabis grower, processor, or both.
- Advised retailers, including national "big box" stores, on entering the legal cannabis market, whether to sell delta-9-tetrahydrocannabinol (THC)-containing products, zero-THC products such as ingestible and topical cannabidiol (CBD), or a combination of both.
- Assisted a food manufacturing client in a Department of Labor child labor audit, resulting in a favorable consent judgment.
- Defended a nationwide operator of travel centers against a nationwide collective action covering more than 65,000 individuals. Negotiated a favorable settlement with a portion of the collective and compelled the remainder to arbitration, where their claims were favorably resolved.
- Served as lead counsel to a global distribution company in numerous class actions across multiple jurisdictions following a large-scale data incident. Guided the client through the remaining aspects of the incident response, successfully negotiated the dismissals of certain actions, and consolidated and moved to dismiss the remaining actions.



## Professional Honors & Activities

- Member – International Association of Privacy Professionals (CIPP/US, CIPM)
- Member – International Association of Defense Counsel
- Listed in *The Best Lawyers in America*® for Litigation - Labor and Employment and Employment Law - Management (2024 – 2026)
- Listed in *Best Lawyers: Ones to Watch*® in America for Labor and Employment Law - Management and Labor and Employment Litigation (2021 – 2023)
- Annually listed in Mid-South Rising Stars by Super Lawyers (2014 – 2024)
- Recognized as an Attorney for Justice by the Tennessee Supreme Court
- Recipient – Baker Donelson Pro Bono Award, Jackson Office
- Recipient – Baker Donelson Pro Bono Award, Firm-Wide Attorney of the Year
- Honoree – Mississippi Volunteer Lawyer's Project
- Inductee – National Order of Barristers



## Publications

- "Tipped Over: Fifth Circuit Vacates the DOL's Rule for Tipped Employees," republished October 16, 2024, in *HR Daily Advisor* (September 2024)
- "The Supreme Court and *Chevron*: Fast Facts for Employers," republished August 1, 2024 in *HR Daily Advisor* (June 2024)
- "Two's Company, Three's A Crowd: Three-Way Split Sets Stage for Supreme Court Review of FLSA Collective Actions," republished July 20, 2023, in *HR Daily Advisor* (May 2023)
- "Workplace Discrimination Lawsuits: Juries Won't Blame AI, They'll Blame You," republished April 12, 2023, in *Westlaw* (March 2023)
- "Another Day, Another Dollar but Still No Salary: Supreme Court Draws Bright Line," republished March 7, 2023, in *Texas Lawyer* (February 2023)
- "To Be or Not to Be: Department of Labor Proposes Rule Addressing Employee/Independent Contractor Classifications" (Originally posted October 12, 2022; Updated with additional notice on October 27, 2022; republished on November 2, 2022, in *Westlaw*)
- "Supreme Court (Effectively) Strikes Down OSHA's "Vaccine or Test" ETS" (January 2022)
- "OSHA's "Vaccine or Test" ETS Reinstated: Next Steps Explained" (December 2021)
- "Legal Challenges to OSHA's "Vaccine or Test" ETS: Your Questions Answered" (November 2021)
- "Top Three Steps for Employers to Take When Facing Fraudulent Unemployment Claims" (April 2021)
- "Fraudulent Unemployment Claims: What Should Employers Do?," *New Orleans CityBusiness* (December 2020)
- "Fraudulent Unemployment Claims on the Rise: What Should Employers Do?," republished November 23, 2020, in *SHRM* (November 16, 2020)
- "Employment Issues Take Center Stage in New Term," *National Law Journal* (August 2019)
- "Drug Testing and Legalizing Marijuana," *Northeast Dairy* (Third Quarter 2018)
- "Navigating the Tricky Waters of Medical Marijuana – Your Questions Answered," *Bloomberg Law* (May 2018)
- Co-author – "Social Media Accounts - Bankruptcy Court Ruling Sets Precedent," *abfjournal* (July/August 2015)
- Contributor – "Employment Discrimination Law," 2015 Cumulative Supplement, Fifth Edition (January 2015)
- Co-author – "FMLA INSIGHTS: The Good, The Bad, & The Ugly," *HR Professionals Magazine* (June 2014)
- Contributor – "Employers and the Law: 2013-14 Anthology of Best Articles," *Van Rye Publishing, LLC* (2014)
- "B.Y.O.D. Bring Your Own Device Policies," *CABA, Newsletter* (November 2013)
- "Privacy and Social Media in the Workplace," *The Mississippi Lawyer* (Fall 2013)



## Speaking Engagements

- Panelist – "Michael Russell & Friends CLE" (October 2024)
- "Social Media: Your Best Friend or Your Worst Nightmare?," Sixth Annual Hospitality & Tourism Law Symposium (July 2017)
- "Gone to Pot: What You Thought You Knew About Weed in the Workplace," FedEx Litigation & Employment Law Seminar (May 2017)
- Faculty – "Marijuana on the March: An Update on Cannabis Laws & the Workplace," Current Developments in Labor & Employment Law, LSBA Section of Labor & Employment Law CLE (March 2017)
- Faculty – "Technology & Cybersecurity Issues for Employers," Tennessee SHRM State Conference (September 2016)

- Faculty – "Ethical Considerations: What to Expect When Handling an Employment Lawsuit," Memphis Bar Association Last Minute: 'Buy the Hour' Seminar (December 2015)
- "Discipline and Termination" and "Workplace Behavior and Privacy Issues," Human Resource Law: What You Need to Know Now, National Business Institute Seminar (November 2015)
- Faculty – "Ethical Implications of Social Media," Tennessee Department of Children's Services, Legal Division Annual Training (October 2015)
- Faculty – "Technology & Social Media for Solo, Small Firms," Tennessee Bar Association Annual CLE (August 2015)
- Panelist – "Cybersecurity & Data Protection Update," First Alliance Bank (August 2015)
- Guest – Lipscomb Pitts Breakfast Club Radio Show (June 2015)
- Faculty – "Privacy & Social Media in the Workplace," Sterling Education Seminar (January 2014)
- Faculty – "Looking Back & Looking Ahead: What Employers Need to Know in 2013," National Business Institute Seminar (June 2013)



## Webinars

- The FTC's Proposed Ban on Non-Competes: What We Know and What You Can Expect (February 2023)
- Post Dobbs: What Employers Need to Know and Where We Might be Headed (July 2022)
- Weed, Leave, and CBD, Oh My! (October 2021)



## Education

- Mississippi College, School of Law, J.D.
  - Clerkship – United States Attorney's Office, Criminal Division, Southern District of Mississippi
  - Clerkship – Hinds County Public Defender's Office, Jackson, Mississippi
- Mississippi College, School of Business, M.B.A.



## Admissions

- Tennessee
- U.S. District Court for the Western, Middle, and Eastern Districts of Tennessee
- Mississippi
- U.S. District Court for the Northern and Southern Districts of Mississippi
- Arkansas
- U.S. District Court for the Eastern and Western Districts of Arkansas
- U.S. Court of Appeals for the Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits
- U.S. Supreme Court