



Bradley Cave

Partner

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Brad Cave partners with employers to find the right solutions for their day-to-day legal issues arising from employment relationships.

PRACTICES

Commercial Litigation
Employment Litigation and Class Actions
Healthcare Law
Labor and Employment
Trade Secrets and Non-Competes
Construction
Accommodations, Disabilities, Leaves
Discrimination, Harassment, Retaliation,
and Litigation
HR Counseling, Compliance, and Risk
Management
Wage and Hour

INDUSTRIES

Healthcare

EDUCATION

George Washington University, J.D.,
1988
With Honors
University of Wyoming, B.S., 1985

BAR ADMISSIONS

Colorado
Wyoming

COURT ADMISSIONS

U.S. Court of Appeals for the Tenth
Circuit

When his clients' decisions are challenged, he defends employers and managers in court, before state and federal agencies, and in arbitration and mediation.

Brad works with family businesses, non-profit organizations, large and small companies, and public entities in the healthcare, human services, education, mining, oil and gas, and construction industries on a wide array of employment compliance matters and disputes.

A believer in the value of training, Brad enjoys leading training sessions for employers, managers, and supervisors in areas such as investigations, discipline and termination, harassment, discrimination, disability accommodation and leave management, and supervisory responsibilities.

Brad currently serves on the firm's Management Committee. He previously served as the practice group leader for the firm's labor and employment practice.

EXPERIENCE

Discrimination, Harassment, Retaliation Investigation and Defense

Accommodations, Disabilities, Leave Management

Employment Litigation and Class Actions

- Breach of Contract
- Employment-related torts
- Defamation and Free Speech
- Non-Compete and Trade Secrets
- Wrongful Discharge

HR Counseling, Compliance, and Risk Management

- Drug and alcohol testing policies and procedures
- Employment contracts
- Employment policies, handbooks, and manuals
- Executive compensation and employment contracts
- Hiring, discipline, performance evaluations, and terminations

- Investigations and audits
- Wage and Hour, Equal Pay, compensation, and benefits

CLIENT RESULTS

Employment Litigation

Discrimination

- Our client, a public hospital, was sued by an orthopedic surgeon for gender discrimination under the Equal Protection Clause based on the hospital's purchase of a competing orthopedic practice owned by male surgeons. Brad persuaded the district court to dismiss the surgeon's claim prior to discovery, and successfully defended an appeal to the Tenth Circuit which affirmed the dismissal, finding the surgeon had failed to plead a viable claim of gender discrimination and the individual hospital board members had qualified immunity. *Morman v. Campbell County Memorial Hospital*, 632 Fed.Appx. 927 (10th Cir. 2015).
- In one of the first age discrimination opinions issued by the circuit courts of appeal after the United States Supreme Court found that disparate impact claims were recognized under the Age Discrimination in Employment Act, Brad successfully defended a summary judgment ruling in favor of the employer on appeal to the Tenth Circuit involving an employee alleging age discrimination after he was laid off. *Pippin v. Burlington Resources Oil & Gas Company*, 440 F.3d 1186 (10th Cir. 2005).

Covenant-Not-To-Compete Enforcement

- Brad recently represented a national company in an action against one of its former sales executives who started a competing enterprise, and began soliciting our client's customers. He persuaded the federal court to enter a preliminary injunction against the former employee and his new business. Then, he negotiated a settlement requiring the former employee to pay a portion of our client's attorneys' fees and consent to an injunction for twice the duration of the court's original injunction.

Negotiation and Resolution of High-Risk Claims

- In three recent matters, Brad negotiated the resolution of a variety of claims asserted by former senior executives. Each matter involved motivated opposing counsel, highly-compensated executives with a grudge, and allegations of retaliation, illegality, or other malfeasance by the client's other senior officers or board members.
- After a client's female vice president became embroiled in a romantic relationship with a direct-report male human resources officer, Brad counseled the client through an independent investigation to determine and implement the appropriate employment actions. He then helped the client to favorably resolve related claims before the Equal Employment Opportunity Commission.

Wrongful Discharge

- We defended our client's decision to discharge an employee who refused to relocate. After the trial court dismissed the former employee's case, Brad represented the employer on the appeal, successfully defending dismissal of the case at the Tenth Circuit. *Tyler v. Tsurumi (America), Inc.*, 425 Fed.Appx. 702 (10th Cir. 2011).

Defamation and Privacy Issues

- Brad advised our client on a particularly sensitive case after the female executive assistant to the CEO quit and filed suit for alleged defamation and emotional distress resulting from rumors circulating throughout the organization, and among the board of directors, that she had an affair with the CEO. Brad deftly managed the case through mediation and achieved a favorable settlement for the exact amount he predicted at the outset of the dispute.

Breach of Contract

- Brad defended the City of Gillette against allegations that it breached an implied employment contract when it modified sick and vacation leave policies. Because the plaintiffs did not comply with the Wyoming Governmental Claims Act, we convinced the trial court to dismiss the case, and the Wyoming Supreme Court affirmed the dismissal. *Hochhalter v. City of Gillette*, 120 P.3d 674 (Wyo. 2005).

Workers' Compensation

- We helped our client successfully challenge a former employee's workers' compensation claim for a surgery - authorized by the Wyoming workers' compensation system - the employer believed was unnecessary. We persuaded the medical commission that the surgery was not justified by medical evidence or the facts surrounding the employee's injury, and defended that finding through the employee's appeals to the district court and the Wyoming Supreme Court. *Beall v. Sky Blue Enterprises, Inc.*, 271 P.3d 1022 (Wyo. 2012).

Commercial Litigation

Our client was the general contractor for three large wind farm projects. The civil earthwork subcontractor defaulted on payments to several of its suppliers, and ultimately walked off the projects prior to completion. We defended over a dozen separate lien actions filed against the projects, prosecuted claims, and defended counterclaims in litigation with the civil subcontractor. After a two-week jury trial in October 2011, a verdict in excess of \$1 million was returned for our client.

Brad represented Wyoming's elected Secretary of State in a challenge to the constitutionality of Wyoming's term limit statute for statewide elected officials. After the trial court certified the constitutional question to the Wyoming Supreme Court, Brad handled briefing and oral argument, persuading the Supreme Court to find the statute unconstitutional. *Maxfield*

v. State of Wyoming, 294 P.3d 895 (Wyo. 2013).

PUBLICATIONS

"Rumors, Innuendo Lead Wyoming Highway Patrol to Face Sexual Harassment Trial," *Employers' Lawyers Blog*, 12/21/2020

"DOL Finalizes FFCRA Regulations," *Holland & Hart News Update*, 04/08/2020

"Disclosing Employee's COVID-19 Status to Employer," *Holland & Hart News Update*, Co-Author, 04/06/2020

"Healthcare Employers Spared Burden of FFCRA By Last Minute DOL Guidance," *Holland & Hart News Update*, 03/30/2020

"Healthcare Employers and the Families First Coronavirus Response Act," *Holland & Hart News Update*, Co-Author, 03/20/2020

"Employment: North America: USA (Wyoming)," *Lexology GTDT*, March 2020

"Corporate Practice of Medicine - AHLA 50 State Survey," *AHLA Physician Organizations Practice Group*, February 2020

"Opioid Prescribing - AHLA 50 State Survey," *AHLA Physician Organizations Practice Group*, February 2020

"Wyoming Employment Law Letter," *Editor*, published monthly by *Business and Legal Resources, Inc.*

"50 Employment Laws in 50 States," *Author*, *Wyoming Chapter*, published by *M. Lee Smith Publishers, LLC*

"Employment At Will: A State-By-State Survey," *Author*, *Wyoming Chapter*, published by the *American Bar Association Labor & Employment Section*

"50 State Survey 2010: Employment Libel and Privacy Law," *Author*, *Wyoming Chapter*, published by the *Media Law Research Center*

"Garnishment vs. Voluntary Child Support Payments: Which Prevails?," *HR Daily Advisor*, 12/20/2019

"Wyoming-Response to Opioid Crisis and Opioid Prescribing Requirements," *American Health Lawyers Association 50-State Survey-State Response to Opioid Crisis and Opioid Prescribing Requirements*, November 2019

"Sexual Harassment Cases Provide Concrete Reason to Change Corporate Culture," *Employers' Lawyers Blog*, November 20, 2018

"Wyoming Employer Sued for Paying Female RNs Less Than Male RNs," *Employers' Lawyers Blog*, October 2, 2018

"Asking Employees About Prescription Medicine Use," *Employers'*

Lawyers Blog, August 23, 2018

"Mandatory Flu Vaccines Land Healthcare Facility In Court," *Holland & Hart News Update*, 02/22/2018

"Employer May Keep Tips As Long As Employees Are Paid Minimum Wage, According To 10th Circuit," *Employers' Lawyers Blog*, September 12, 2017

"DOL Withdraws Obama-Era Interpretations On Independent Contractors and Joint Employment," *Employers' Lawyers Blog*, June 7, 2017

"Sexual Harassment Claim May Proceed Despite Lack Of Specificity In EEOC Charge," *Employers' Lawyers Blog*, May 31, 2017

"Retroactive Leniency Is Not A Reasonable Accommodation," *Employers' Lawyers Blog*, April 19, 2017

"Top Ten List of Risky Employment Practices," *Wyoming Lawyer*, April 11, 2017

"Training supervisors to lead without liability," *Wyoming Business Report* (www.wyomingbusinessreport.com), February 21, 2017

"Dealing With The Decline In Wyoming Jobs," *Employers' Lawyers Blog*, January 12, 2017

"Understand the Whistleblower (and Prevent Retaliation Claims)," *HRhero*, Co-Author, November 2016

"Employee Fails at Telework and Then Asks to Work from Home As Accommodation," *Employers' Lawyers Blog*, 06/21/2021

SPEAKING ENGAGEMENTS

"To Vax or Not To Vax? Employers' Options and Compliance ," *Holland & Hart Webinar*, 06/22/2021

"COVID-19 Legal Issues for Employers," *Wyoming Business Council Webinar*, April 21, 2020

"Telemedicine; Responding to Law Enforcement," *2019 Wyoming Healthcare Compliance Bootcamp*, 11/08/2019

"Informed Consent; Creating/Ending Patient Relationships; Wyoming Hospital Records and Information Law," *Wyoming Healthcare Compliance Bootcamp*, Laramie, WY, September 28, 2018

"How Can I Help You?" Managing Employee Health Conditions from Hiring through Termination," *Wyoming Hospital Association Annual Meeting & Convention*, Laramie, WY, September 5, 2018

"Sexual Harassment – Ensure Your Company Isn't in the Headlines," *High Desert Human Resources Association*, April 19, 2018

"Evaluating Sexual Harassment Claims for the Employee and Employer,"
Co-Presenter, Wyoming Trial Lawyers Association & Laramie County Bar Association, April 19, 2018

"Embrace Your Inner Whistleblower! How to Avoid or Win Retaliation Claims Through a Solid Risk-Management Framework that Aligns with Company Culture," *BLR Advanced Employment Issues Symposium, November 17, 2017*

"HR Bootcamp – The Nuts and Bolts of Discipline and Termination,"
Wyoming Hospital Association, September 21, 2017

"2017 BHMC Annual Seminar," *Big Horn Mountain SHRM, April 18, 2017*

"Wage and Hour Bootcamp," *Sheridan County Chamber of Commerce, November 2016*

RECOGNITION

- *The Best Lawyers in America*®, Employment Law – Management, 2003-2022; Labor Law – Management, 2003-2022
- *Benchmark Litigation*, Local Litigation Star, 2013-2021
- *Benchmark Labor & Employment*, Labor and Employment Star West, 2019, 2020
- *Chambers USA: America's Leading Lawyers for Business*, Labor & Employment, 2005-2021
- Mountain States Super Lawyers®, Top 100 Lawyers, 2015-2018, 2020-2021
- Mountain States Super Lawyers®, Employee Litigation: Defense, 2007-2021

PROFESSIONAL AND CIVIC AFFILIATIONS

- Inducted into The College of Labor and Employment Lawyers, November 2009 (The College's first Wyoming Member)
- Employment Law Alliance, Wyoming Member
- Employers Counsel Network, Wyoming Member
- American Bar Association, Member
- Wyoming Bar Association, Member
- Colorado Bar Association, Member
- Defense Research Institute, Member
- Defense Lawyers Association of Wyoming, Member
- Society of Human Resource Management, Member