

LAW WEEK COLORADO

LABOR & EMPLOYMENT

Best Law Firms Adjust to Employment Law Challenges During COVID

Changes in laws, an expected surge in lawsuits and the incoming Biden administration are keeping attorneys on their toes

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While some practice areas have slowed down due to the pandemic and recession, employment law attorneys have remained as busy as ever. Employment lawyers at Denver firms recognized on the “Best Law Firms” list discuss what sets their firms apart and their approach to advising clients on the slew of new laws, regulations and emergency orders that have been issued in response to COVID.

COURTS AND COACHING

Denver-based Wells Anderson & Race prides itself on being a majority women-owned firm known for its trial lawyers and ability to handle complex commercial litigation. But member Cathy Havener Greer says success isn’t always about winning in court.

“Because we are trial lawyers, I think we really work very hard to make sure that our clients understand what the risks of going to trial are, what the benefits are of going to trial, what you can achieve in a courtroom, and what you can’t necessarily achieve in a courtroom,” Greer said.

“We really pride ourselves on being effective at communicating those sorts of challenges so that our clients aren’t taken by surprise by litigation.”

The firm made the “Best Law Firms” Tier 1 list for Colorado in labor and employment litigation along with several other categories. The firm’s employment litigation attorneys include three members, one special counsel and several associates who work across different practice groups. In addition to its private employer clients, the firm represents many public employers, according to Greer, including the state of Colorado and a number of cities and counties.

While the pandemic has put many tri-

als on hold, the firm’s employment law attorneys have stayed busy advising clients of changes in the law that will affect their Colorado operations. These include the state’s new sick leave law, set to take effect in January, and ever-changing government orders and guidance on business operations during the pandemic.

“It seems that we have a more active state in terms of recognizing the risks of COVID to different types of operations,” Greer said, adding that although some people are opposed to masks and other restrictions, “I think that overall, Colorado seems to be more of one mind than some of the other states. So that’s been a positive.”

ONLINE EDUCATION

Ogletree Deakins was named “Law Firm of the Year” in the labor and employment litigation category and also earned a Tier 1 ranking for Colorado in that category as well as management-side employment law and immigration law.

Roger Trim, managing shareholder at the firm’s Denver office, said one of the biggest accomplishments for the Denver labor and employment group this year has been being “on the cutting edge of developments in Colorado wage and hour law” and educating clients on the “myriad changes” in Colorado employment law. In addition to the sick leave law that passed this spring and an equal pay law that takes effect in January, Colorado recently passed a public health emergency whistleblower law in response to COVID.

“We joke that Colorado is becoming more like California in its labor and employment environment, and that’s true,” Trim said. “It seems like every year there are laws that impose more and more obligations on employers.”

In a normal year, Trim said, the firm would bring clients up to speed on these

developments during a regular breakfast or lunch meeting. “That’s a little more difficult in this environment,” he said, “but we’ve been able to translate our educational and counseling services into a more virtual model.”

Ogletree Deakins’s annual “Managing a Workforce” event is one of the biggest labor and employment seminars in the state, usually drawing around 300 attendees. The firm was able to transition it to an online event featuring a live kickoff and several on-demand programs attendees could watch at their leisure over the course of a couple weeks. After that, there was an online happy hour where participants could ask any questions they had about the programs.

“We were able to pivot and adapt to the new environment and keep our strong, robust counseling practice,” Trim said.

As for what’s on the horizon in labor and employment law, Trim said he expects to see many more COVID-related lawsuits make their way to the courts in the next six to 12 months. Some of the litigation will be over pandemic-related layoffs, he said, while others are likely to come about because laws weren’t written to address a global pandemic.

“Most of us in the labor and employment environment are seeing how a lot of existing laws such as the American with Disabilities Act and Family Medical Leave Act are being applied to this pandemic,” Trim said, “but none of these laws were written to deal with a pandemic in mind.”

TRACKING TRENDS

Fisher Phillips regional managing partner Michael Greco said some trends have already emerged in COVID-related employment litigation. His firm has been tracking data on pandemic-related lawsuits through an online tool.

“The first thing that’s surprising to us is that we’re seeing that the employers who are facing the brunt of litigation are small employers, those with 50 or fewer employees,” Greco said. A second trend is that the health care industry remains a “prime target” for COVID litigation, he added, with nearly a quarter of all workplace claims filed against health care entities.

Fisher Phillips was ranked as a Tier 1 firm for Colorado in labor and employment litigation and management-side employment law. The firm’s Denver office has had an eventful year, having completed a move to a new office in the middle of the pandemic and added two attorneys, bringing the office’s total to 23.

According to Greco, one of the things that sets Fisher Phillips apart is the range and depth of its employment and labor law expertise. “We view ourselves as one-stop shopping for an employer who has any needs with respect to its workforce,” he said, from sexual harassment and discrimination claims to data privacy counseling to noncompete and trade secret litigation.

Along with staying on top of the latest COVID orders and guidance, Greco predicts employment and labor lawyers will be busy adjusting to the changes the Biden administration will bring.

Greco said he has been telling employers to watch for a rollback of employer rights at the National Labor Relations Board and a return to stricter workplace safety reporting requirements that were relaxed under Trump. He added employers should expect greater scrutiny of their handbooks, policies and written procedures.

Greco said he also expects a greater push for federal legislation on data privacy, a \$15 minimum wage, pay equity and expanded benefits under the Affordable Care Act. •

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