

LABOR & EMPLOYMENT

The attorneys in Hodgson Russ's Labor & Employment Practice have extensive experience counseling public, private, union, and non-union clients in matters involving a wide range of labor and employment laws. We represent management exclusively.

We assist CEOs, CFOs, human resources professionals, employee benefits managers, and corporate counsel from companies headquartered across the United States and around the world with legal issues relating to managing employees and union relations. Hodgson Russ represents employers in a wide range of economic sectors and industries, including healthcare, financial institutions, manufacturing, construction, hospitality, state and local government, retail, aerodynamics, school districts, service providers, technology companies, and a wide range of other businesses.

Hodgson Russ labor and employment attorneys focus on preventive steps first. Avoidance of litigation and human resource problems is the most efficient method of minimizing the risk of costly employment disputes. However, should a dispute occur, Hodgson Russ attorneys are well prepared to assist clients in resolving disputes with current and former employees and the unions that may represent them. Keeping our clients' fiscal, operational, and public relations needs in mind, our attorneys strive first to diffuse problematic situations without formal litigation, often using mediation from the Equal Employment Opportunity Commission Mediation Program, the Federal Mediation and Conciliation Service, and the State Employment Relations Board. In cases where it is impossible to arrive at a resolution short of litigation, Hodgson Russ attorneys aggressively seek favorable results before arbitrators, administrative agencies, and the courts.

Our Labor & Employment Practice provides ongoing education and information to clients concerning changes in laws and regulations, and we regularly present conferences and on-site training sessions for executives, managers, and supervisors, to help in preventing situations that might result in litigation.

Our attorneys practice before all government agencies and courts that adjudicate employment and labor matters, including:

- All courts in New York State
- Equal Employment Opportunity Commission
- Federal District Courts, U.S. Circuit Courts of Appeals, and U.S. Supreme Court
- National Labor Relations Board

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Professionals

Attorneys

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Jeffrey Swiatek
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- Public Employment Relations Board
- Workers' Compensation Board and Unemployment Insurance Appeal Board
- State fair employment practices agencies
- U.S. Department of Labor – Hodgson Russ has been awarded prestigious "Best Law Firms" National Tier 2 in the Labor Law - Management category and Metropolitan Tier 1 rankings by *Best Lawyers/U.S. News & World Report* in the Labor Law – Management and Employment Law – Management categories.

Labor & Employment Law

Hodgson Russ's labor and employment law practice, which has grown in scope for more than 70 years, includes extensive capabilities in matters involving the National Labor Relations Act, the Public Employees' Fair Employment Act, and State and Federal wage and hour laws, as well as numerous civil rights laws, including the Family and Medical Leave Act, the Americans with Disabilities Act, Title VII, the New York State Human Rights Law, and other laws regulating an employer's relationship with its employees.

Hodgson Russ attorneys have extensive experience representing clients in state and federal courts as well as alternative dispute resolution forums, such as mediation and arbitration, and regularly represent clients in contested proceedings, including administrative hearings, trials, motions, and appeals.

Hodgson Russ attorneys provide counsel to employers on issues including:

- Employment discrimination avoidance
- Pre-employment applications, employment contracts, restrictive covenants, confidentiality and non-compete agreements, employment contracts, and employee handbooks
- Affirmative action and OFCCP compliance reviews for federal contractors
- Effective, defensible programs for drug testing, family leave, attendance improvement, supervisor training, occupational safety and health, employee benefits, work force reduction, and sexual and other unlawful harassment avoidance
- Unemployment Insurance compliance
- Federal and state wage and hour laws

Hodgson Russ defends employers in adversarial proceedings by:

- Representing employers before the Equal Employment Opportunity Commission and state fair employment practices agencies
- Investigating charges and complaints
- Providing counsel and representation in court proceedings
- Representing employers in proceedings before the National Labor Relations Board and state labor agencies
- Handling hearings and appeals before other federal and state administrative agencies

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- Providing counsel on handling grievances, including drafting grievance answers
- Providing representation during arbitration through witness preparation and evidence gathering, preparation of pre-hearing statements, presentation of employer's case at hearings, and writing post-hearing briefs
- Providing representation in audits of wage and hour and other employment practices by state and federal agencies

Labor Law

Hodgson Russ labor attorneys assist clients in managing union relationships. We also help clients who want to maintain union-free status by:

- Providing counsel on labor practices to identify weaknesses before problems are encountered
- Counseling and training supervisors and managers
- Providing advice on responses to union-organizing campaigns
- Providing advice on bargaining unit issues and employer campaigns in NLRB representation elections

Hodgson Russ attorneys help clients deal with unions that represent their employees by:

- Recommending strategic plans for negotiations
- Serving as spokespersons at the bargaining table
- Analyzing cost and consequences of proposals
- Working with mediators and other neutrals
- Drafting proposals, counter proposals, and final contract language
- Analyzing collective bargaining agreements
- Counseling on strike or lockout strategies
- Advising on documentation of incidents (affidavits, investigations)
- Instituting legal proceedings when necessary, including actions for temporary restraining orders and preliminary or permanent injunctions
- Defending unfair labor practice and improper practice charges
- Assisting in filing charges where appropriate

Experience

Hodgson Russ closed a merger transaction on behalf of a long-time, NASDAQ-listed defense and aerospace products manufacturing client. As a result of the merger, the client became a wholly owned subsidiary in a deal valued at approximately \$275 million. The closing completed a four-month project in which attorneys from many of our practices contributed in significant ways under intense time pressures and opposite some of the largest firms in the country. Our work included advising our client's board in connection with its fiduciary duties; negotiating the merger agreement; preparing a

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proxy statement for the special meeting of shareholders and dealings with the SEC and FINRA; defending the company and the board in two shareholder lawsuits alleging, among other things, breach of fiduciary duty by the board; appearing in federal and state court and ultimately settling the lawsuits; advising management on directors and officers insurance matters; advising the board and management on certain options and other benefit matters; handling HSR filings; and assisting on financing related to the transaction.

Hodgson Russ helped a France-based, publicly traded manufacturer of automotive fluid transfer parts complete the acquisition of a Michigan-based automotive parts manufacturer from one of the largest private equity firms in the United States, including handling all employment-related legal aspects of the transaction. As a result of the deal, the French manufacturer now employs 8,000 people in 11 countries with annual projected sales of €620 million, up from €410 million in 2010. Hodgson Russ was the lead firm for the U.S. aspects of this transaction, including advising on the U.S. aspects of a multimillion-dollar acquisition financing package from a consortium of French lenders.

Hodgson Russ attorneys represented France-based Cegedim, a leading provider of databases and software solutions for the health care industry, in a deal reached in March to acquire Dendrite International, a former rival in the pharmaceutical marketing solutions sector. The \$751 million deal was expected to result in a combined company with operations in more than 75 countries throughout Europe, North and South America and Asia Pacific, and with annual revenues of approximately \$1.1 billion. Hodgson Russ assisted with all employment-related legal aspects of the transaction.

Hodgson Russ handles the day-to-day and complex labor and employment related matters for various large food and beverage manufacturers, including union negotiations, advice on executive compensation, defense of employment-related disputes and advice on employee benefit matters.

A Hodgson Russ team of attorneys represented a client in connection with a major corporate acquisition, including extensive employment-related due diligence, the revision of employment-related representations and warranties in purchase documents, WARN Act compliance, the administration of complex benefits issues in connection with the transaction, and the negotiation of employment agreements for executives hired by the company.

An attorney representing Hodgson Russ recently won summary judgment on a multiple claim employment case for a pharmaceutical company, which included allegations of age discrimination, hostile work environment, retaliation and failure to pay overtime wages. The case took an interesting twist when the plaintiff's former direct supervisor left the company and gave deposition testimony that was completely contrary to what he had previously stated in support of our client. The Hodgson Russ attorney was able to limit the potential damage and obtain key admissions necessary to support summary judgment. In a lengthy opinion, the Western District Court found that the plaintiff failed "to point to any evidence of age-related discriminatory animus" and that the plaintiff's termination for falsifying company records was a "legitimate, non-discriminatory reason for the adverse employment action."

Several of our clients in the food, automotive, and chemical industries contribute to multiemployer defined benefit plans. The plan trustees imposed on these clients millions of dollars in additional contributions and withdrawal liability to remedy the underfunded status of the plans. In many cases, we were able to negotiate changes in the wage and benefit packages in the applicable collective bargain agreements to offset the cost of these additional contributions. In other cases, we negotiated substantial reductions in withdrawal liability.

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Hodgson Russ has successfully created a number of project labor agreements on large-scale capital projects involving public and private developments.

Hodgson Russ has represented counties and local industrial development agencies in the restructuring of the provision of public nursing home services. In several situations, the restructuring involved the transfer of the nursing home from the local county to a private owner and operator. In one situation, we formed a local development corporation controlled by the local county to operate the local nursing home.

A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation (NYSE: ITGR), in a \$1.7 billion acquisition of Lake Region Medical, a privately held portfolio company of KKR. The purchase price consisted of cash (including assumed debt) and unregistered shares of common stock. Financing was through a bank/bond package, consisting of a \$1.6 billion credit facility (TLA/TLB/ revolver) and \$360 million of senior notes offered under Rule 144A. Hodgson Russ counseled on every aspect of the transaction, performing U.S. and supervising international due diligence; negotiating the merger agreement and related acquisition documentation; advising on U.S. competition law matters, including preparing Hart-Scott-Rodino and related foreign filings; negotiating the bank credit facility and leading the high-yield note offering; and advising on executive compensation and employment law aspects of the transaction. The Hodgson Russ team consisted of attorneys Craig M. Fischer, Cristin L. Murray, Matthew R. Scherer, and David G. Reed (securities regulation and corporate compliance); Robert B. Fleming, Jr. (antitrust and trade regulation); Christofer C. Fattey and Timothy Ho; Ryan M. Murphy and Richard W. Kaiser (employee benefits); Peter C. Godfrey (labor and employment); and Michael J. Hecker (environmental); and paralegals Courtney Scanlon, Deborah Kalstek, and Betsy Mills.

Hodgson Russ attorneys successfully negotiated a collective bargaining agreement for one of our heavy manufacturing clients that included a complex tiered wage and benefit package. This enabled our client to compete against stiff foreign competition. The union vehemently objected to our proposals and conducted a five-month strike, during which the company continued to operate the plant. We guided the company through the strike and related National Labor Relations Board (NLRB) proceedings.

A teamsters local in Detroit filed a representational petition against a Hodgson Russ client. Our labor and employment attorneys intensively advised the client during the campaign, and the company won the election. The union filed objections to the results, but our attorneys were able to convince the National Labor Relations Board (NLRB) to dismiss the objections.

Attorneys from Hodgson Russ acted as Chapter 11 bankruptcy counsel to a meat distribution company in its Chapter 11 bankruptcy proceedings. At the time of its filing, the company was one of the largest family-owned meat distribution companies in the country, with yearly revenues in excess of \$900 million.

When a European-based heavy machinery manufacturer sought to strengthen its presence in North America, it saw in a U.S. company the perfect opportunity to expand its product line and distribution capabilities in the United States. With the help of Hodgson Russ, the U.S. division of this manufacturer completed the acquisition of this company and its complementary product line, thereby significantly increasing the size of its U.S. operations and positioning itself for future growth in this market. The acquisition — valued at approximately \$43 million, combining a cash purchase price and

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assumption of debt — is the multinational manufacturer’s largest U.S. acquisition to date. The company’s U.S. employee base more than quadrupled with the addition of the U.S. company’s approximately 400 employees, and it added locations in Alabama, Florida, Indiana, Iowa, Kentucky, Tennessee, Texas, and other states to its manufacturing and distribution network. Prior to this acquisition, Hodgson Russ handled the incorporation of the European manufacturer’s U.S. division and its acquisition of a smaller U.S. manufacturing company. In connection with this expansion, we designed and drafted restricted stock plans to incentivize their key employees. Since this transaction, Hodgson Russ has represented this client in two additional acquisitions, one on the East Coast and one on the West Coast.

Hodgson Russ successfully defended a New York State community college in a discrimination case with employees who filed multiple grievances with the NYS Division of Human Rights (NYSDHR) involving race, disability and gender. The complainants maintaining employment throughout the duration of the filing, investigation and resolution further complicated the matter. Our attorneys, led by partner Elizabeth McPhail, successfully defended the complaints at both the investigative state and at the hearing before an Administrative Law Judge in a public hearing, with the determination of no probable cause.

Hodgson Russ has defended clients in the public and private sectors against discrimination and retaliation complaints at the Equal Employment Opportunity Commission (EEOC) and various state administrative agencies. For example, we defended a client against a sexual harassment complaint from an employee. The client needed guidance investigating two internal sexual harassment complaints and an internal retaliation complaint. After the employee was subsequently terminated from employment for poor performance, the firm defended and secured a no probable cause determination from the New York State Division of Human Rights (NYSDGR). The well-organized internal investigation reports resulted in the successful defense of the matter at the NYSDHR.

Hodgson Russ successfully represented a large company in connection with a wage-and-hour audit by the U.S. Department of Labor regarding the exempt status of certain workers under the Fair Labor Standards Act.

A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation (NYSE: ITBR), in its successful tax-free spin-off of its subsidiary, QiG Group, LLC, which converted into Nuvectra Corporation prior to the completion of the spin-off. Nuvectra is a medical device company that is concentrated on the development and commercialization of its neurostimulation technology platform, and, in particular, its Algovita spinal cord stimulation system, for the treatment of various disorders through the stimulation of tissues associated with the nervous system. As part of the spin-off, Nuvectra received approval to list and to have its common stock traded on the NASDAQ Global Market under the symbol “NVTR.” Hodgson Russ advised on all aspects of the separation of Nuvectra from Greatbatch and the corresponding distribution of the Nuvectra shares of common stock to Greatbatch’s stockholders, including the registration of Nuvectra with the SEC, the listing of Nuvectra’s common stock on the Nasdaq Global Market, facilitating the negotiation of agreements between Nuvectra and Greatbatch to establish a framework for their post spin-off relationship; preparation of corporate governance policies and procedures for Nuvectra as a newly publicly-traded company and assisting in the separation of Greatbatch’s existing employee benefit programs and the establishment of new programs by Nuvectra. The team of Hodgson Russ attorneys consisted of Craig M. Fischer (securities regulation and corporate compliance); Christofer C. Fattey (banking and finance); Terrence M. Gilbride and Elizabeth A. Holden (real estate); Ryan M. Murphy and Richard W. Kaiser (employee benefits); Peter C. Godfrey (labor and employment); Richard F. Campbell and Andrew D.

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Oppenheimer (business tax); and paralegal Courtney Scanlon.

Hodgson Russ attorneys have assisted employers as they navigate union organizing campaigns, negotiation of first contracts, and bargaining successor contracts, and have guided union clients through the administration of their grievance/arbitration provisions. We regularly counsel our nonprofit clients on union negotiations, including recently securing a broad and inclusive management rights proposal for a client that needs this flexibility in order to operate its programs under the confines of governmental grants. For other union clients, our attorneys adeptly address matters at the National Labor Relations Board. We negotiated a favorable settlement for a client in Michigan that faced large exposure in an unfair labor practice due in part to an indemnification clause in a contract for services with one of its customers.

A well-funded union launched an organizing drive against a Hodgson Russ client with more than 3,000 employees in multiple locations. Our attorneys created a plan consisting of union-free training and employee communications and meetings that successfully ended the organizing drive.

In the News

Non-compete agreements face ban, but legal fight kicks off
The Buffalo News, May 6, 2024

What could the federal vaccine mandate mean for businesses? An attorney weighs in.
Buffalo Business First, September 20, 2021

Coronavirus Resource Center

2nd Circ. Says High Court Ruling Dooms Health Aides' Suit
Law 360, June 7, 2021

New Biden Nominee Is First Step Toward Democrats Gaining NLRB Majority
HR Daily Advisor, May 27, 2021

Webcast Speakers: Cannabis Legalization Passed, But Much Remains To Be Done
The Trusted Professional, April 22, 2021

New York State Attorney General's Cuomo investigation: What an Albany attorney says to expect
Albany Business Review, March 12, 2021

Employers Likely to Seek Exceptions in \$15 Minimum Wage Bill
HR Daily Advisor, January 28, 2021

Thought Leaders - COVID-19 and Work Safety
Buffalo Business First, October 30, 2020

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Questions still surround changes to New York state's paid leave laws
Buffalo Law Journal, October 21, 2020

Press Releases

Hodgson Russ LLP Receives Multiple Top Marks from *Chambers USA Guide 2023*
June 6, 2023

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of Upstate New York Super Lawyers
Hodgson Russ Press Release, August 23, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Kinsey O'Brien Appointed Chair of the Labor Law Committee of the Bar Association of Erie County
Hodgson Russ Press Release, June 21, 2021

Hodgson Russ Receives Top Marks for *Chambers USA 2021 Directory*
Hodgson Russ Press Release, May 26, 2021

Hodgson Russ Receives Top Marks for *Chambers USA 2020 Directory*
Hodgson Russ Press Release, April 24, 2020

Labor and Employment Attorney Charles H. Kaplan Joins Hodgson Russ
Hodgson Russ Press Release, March 24, 2020

Hodgson Russ Adds 5 Lawyers in the Capital District
Hodgson Russ Press Release, September 3, 2019

Hodgson Russ Receives Top Marks for *Chambers USA 2019 Directory*
Press Release, May 1, 2019

Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report/Best Lawyers 'Best Law Firms' Report*
Press Release, November 18, 2015

Publications

Court Challenge Looms, but Employers Urged to Prepare for New Overtime Rule
HR Laws, May 1, 2024

New York State's "Freelance Isn't Free" Act – What Employers Need to Know
Hodgson Russ Labor & Employment Alert, April 18, 2024

Employees Enjoy a Private Right of Action Under Changes to New York City Earned Safe and Sick Time Act
Hodgson Russ Labor & Employment Alert, March 7, 2024

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NY General Obligations Law Amended to Limit Further Pro-Employer Provisions in Settlement Agreements

Hodgson Russ Labor & Employment Alert, January 23, 2024

New Year - New Statute of Limitations for Complaints filed with the New York State Division of Human Rights

Hodgson Russ Labor & Employment Alert, December 29, 2023

New York State Increases Minimum Wage and Modifies Other Salary Requirements

Hodgson Russ Labor & Employment Alert, December 22, 2023 - CORRECTED*

Wage Theft In New York Is Now Criminal Larceny

Hodgson Russ Labor & Employment Alert, October 3, 2023

New York State Bans Employee Captive Audience Meetings

Hodgson Russ LLP Labor & Employment Alert, September 28, 2023

OSHA Launches National Emphasis Program Targeting Warehousing and Distribution Operations

Hodgson Russ Occupational Safety & Health Act Alert, August 8, 2023

New York Amends and Expands Scope of Statewide “Pay Transparency” Law

Hodgson Russ Labor & Employment Alert , July 6, 2023

Presentations & Events

2024 Hot Topics: What Employers Need to Know

February 8, 2024

State and Local Tax Update for 2023 - NYS & NYC & NJ

Long Island Marriott, 101 James Doolittle Boulevard, Uniondale, NY 11553, December 13, 2023

Labor & Employment Developments

605 Third Avenue, Suite 2300, New York City, NY 10158, November 29, 2023

28th Annual Labor and Employment Conference

Buffalo Marriott Niagara 1340 Millersport Hwy, Amherst, NY 14221, November 8, 2023

US Readiness Online Immersive 6.0

June 20, 2023

Transparency is Key – From Job Postings to Notice Requirements, How Employers Must be More Transparent Than Ever

May 15, 2023

Glen Doherty to Participate in “HR Compliance & Lawsuits” Webinar

April 4, 2023

Kinsey O’Brien, Thomas Grenke Speak On Transparency in Job Postings

March 15, 2023

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New York State Management Attorneys Conference
New York, NY, January 21, 2023

2023 Employment Law Update

Annual Conference of the State University of New York Auxiliary Services Association, January 5, 2023

