



## ELIZABETH D. MCPHAIL

Partner

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Elizabeth represents both public and private sector employers regarding the full range of labor and employment-related issues. Elizabeth counsels management clients in a wide range of industries, including manufacturing, health care, nonprofit and social services, long-term/nursing care, and food preparation, regarding their rights and obligations under various labor and employment statutes, including counseling them regarding wage and hour issues, the Family Medical Leave Act (FMLA), the National Labor Relations Act, the Taylor Law, and state and federal anti-discrimination laws. In essence, Elizabeth helps employers avoid costly and time consuming issues involving their employees and resolve problems with those employees if avoidance proves impossible.

Elizabeth provides employment services to union and non-unionized clients regarding disciplinary action and terminations, defending discrimination claims, attending unemployment hearings, assisting with mass layoffs or reductions in force, drafting employment agreements and separation/severance agreements, and counseling clients about the application of various state and federal employment laws. She provides a wide range of labor services to union employers in the public and private sectors, including advice about negotiations, defending labor arbitrations, processing grievances, and general advice about navigating the union environment.

Elizabeth also counsels school districts on a variety of topics, including negotiations with labor organizations, conducting discrimination investigations, teacher disciplinary issues, and general board of education governance.

Elizabeth counsels Canadian clients on a broad range of labor and employment legal issues related to expansion and acquisitions (due diligence) into the U.S. market.

### Honors

- Listed, *Best Lawyers in America* (Employment Law – Management) 2019 - 2024

The Guaranty Building  
140 Pearl Street  
Suite 100  
Buffalo, NY 14202

### Practices & Industries

Labor & Employment  
Education  
College & University  
Municipal  
Employment Litigation  
Media & First Amendment  
Food & Beverage  
Canada-U.S. Cross-Border

### Admissions

New York  
U.S. District Court, Western District  
of New York

### Education

Clemson University, B.A., cum  
laude  
University at Buffalo School of Law,  
J.D.

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- *Buffalo Business First's* 40 Under Forty Award, 2011

## Experience

Hodgson Russ has a full-service approach to handling problems for school district clients when public opinion is a particular concern. Over approximately a six-month period, the firm guided a school district client through disciplinary matters involving tenured teachers that garnered much public attention because of statements by an authority figure from a municipality. Not only did the firm give substantive advice on the disciplinary process for the employees, it also assisted the district in navigating the court of public opinion.

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 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 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.

Hodgson Russ LLP assists municipal and other public sector clients in labor related matters at the Public Employment Relations Board (PERB). We have represented clients and counseled them through the recognition process at PERB. Elizabeth McPhail recently assisted a mutually acceptable collective negotiation agreement with a police bargaining unit. We negotiate contracts and navigate grievances/arbitrations for public sector employees from clerical to police and fire.

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.

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## **In the News**

Thought Leaders - COVID Turned the Workplace Upside Down and That's Good  
*Buffalo Business First*, October 15, 2021

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

Thought Leaders: Labor & Harassment Laws  
*Buffalo Business First*, March 27, 2020

Navigating the New Laws  
*Buffalo Law Journal*, January 14, 2019

Buffalo Business First - Thought Leaders: First Amendment  
*Buffalo Business First*, June 29, 2018

## **Press Releases**

83 Hodgson Russ LLP Attorneys Ranked in 2024 Edition of *Best Lawyers in America*  
August 17, 2023

Hodgson Russ LLP Honored with 2023 New York State Bar Association President's Pro Bono Service Award  
April 17, 2023

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

55 Hodgson Russ Attorneys Ranked in 2022 Edition of *Best Lawyers in America*  
*Hodgson Russ Press Release*, August 19, 2021

55 Hodgson Russ Attorneys Ranked in 2021 *Best Lawyers in America*  
*Hodgson Russ Press Release*, August 20, 2020

52 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings  
*Hodgson Russ Press Release*, August 20, 2019

48 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings  
*Press Release*, August 15, 2018

## **Publications**

U.S. Department of Education Announces Long-Awaited Final Title IX Regulations  
*Hodgson Russ Education Alert*, April 25, 2024

ELIZABETH D. MCPHAIL

New York State's "Freelance Isn't Free" Act – What Employers Need to Know

*Hodgson Russ Labor & Employment Alert*, April 18, 2024

Supreme Court Provides Further Guidance on Public Officials First Amendment Rights on Social Media

*Hodgson Russ Media & First Amendment and Municipal Alert*, March 20, 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

New York State Amends Workplace Violence Prevention Law to Apply to School Districts

*Hodgson Russ Education Alert*, February 15, 2024

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\*

Alternative Instruction for Suspended Students

*Hodgson Russ Education Alert*, October 20, 2023

Wage Theft In New York Is Now Criminal Larceny

*Hodgson Russ Labor & Employment Alert*, October 3, 2023

## **Presentations & Events**

2024 Hot Topics: What Employers Need to Know

February 8, 2024

39th Annual School Client Conference

M-Hotel Buffalo, 2040 Walden Ave, Buffalo, NY 14225, January 12, 2024

28th Annual Labor and Employment Conference

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

38th Annual School Client Conference

Buffalo Marriott Niagara 1340 Millersport Hwy, Amherst, NY 14221, January 13, 2023

27th Annual Labor & Employment Conference

Buffalo Marriott Niagara 1340 Millersport Hwy, Amherst, NY 14221, January 12, 2023

What Food and Beverage Employers Can Learn from the Starbucks' Union Organizing Campaign

October 13, 2022

ELIZABETH D. MCPHAIL

School Safety: Red Flag Laws, Critical Responsibilities, Creating Student Support Systems, and Other Practical Considerations for School Districts

June 8, 2022

Arbitrating the New Employment Realities

National Academy of Arbitrators, May 13, 2022

37th Annual School Client Conference

Buffalo Niagara Marriott, 1340 Millersport Hwy, Amherst, NY 14221, May 6, 2022

2021 Labor & Employment Webinar Series

November 19, 2021

### **Professional Affiliations**

Elizabeth is a member of the New York State Bar Association and Bar Association of Erie County.

### **Community & Pro Bono**

- Past Chair of the Buffalo Olmsted Parks Conservancy Board of Trustees
- Board Member and Board Officer of the Zonta International Empowering Women Through Service and Advocacy Club of Grand Island
- Board Member Board of Directors Planned Parenthood of Western New York; Professionals Committee Member