

Employment Law

We help employers navigate the potential liabilities, pitfalls, and challenges of a modern workforce.

The complexities of the employee-employer relationship include an ever-changing array of local, state, and federal legislation and court decisions affecting the workplace. Drawing on our experience with the diverse facets of employment law, we guide employers through this challenging legal landscape.

We also understand that employees form the cornerstone of a company, and we collaborate with clients on strategies for regulatory compliance and best practices that support a vibrant and productive workforce.

Experience

- **Defense of \$8 million claim for theft of trade secrets, employee disloyalty, breach of non-solicitation agreement, and aiding and abetting.** Our client, a large truck parts supply company, hired the top two managers of one of its branch offices, with employment to start after a new branch office was built out by client. After waiting in place for three and a half months, the managers resigned from plaintiff's branch without notice and immediately began recruiting plaintiff's employees – and were successful in getting 55 percent of the workforce to join our client. The managers and all employees were “at will,” but one of the managers had a non-solicitation agreement, and the new employees brought customer lists with them. Plaintiff contended that the employee “lift out” irreparably destroyed their business in the state where the branch office was located. After a three-week jury trial in federal court, the jury returned a defense verdict on all counts.
- **Independent contractor classification challenge.** Moss & Barnett represented a financial services company that serves clients through a network of independent brokers. The Minnesota Unemployment Insurance Division had found that a broker who had left the company was an employee, and that all similarly situated workers were also employees. Our team gathered documents and prepared witnesses for a hearing that would determine whether the company's operating model was valid. The appellate division overturned the initial unfavorable determination and found that the individual and those who performed similar services did, in fact, meet the high threshold that our client used for qualifying independent contractor status.
- **Customizing a drug and alcohol testing policy.** A client with employees in many different states needed an overhaul of its drug and alcohol testing policy. The company had some employees covered by the federal Department of Transportation drug testing requirements. Other employees were subject to testing to be determined solely by reference to the applicable state law. We crafted a drug and alcohol testing policy that met the requirements of the federal law and the varying requirements of all the states, maximizing the employer's flexibility and control. We continue advising the employer on its implementation of the policy in specific circumstances.

- **Settling a former shareholder's claims.** The majority owner of a successful company was sued by a former minority shareholder she had previously bought out. The plaintiff alleged that his rights as a minority shareholder were violated before he sold his stock. In a case of first impression, the plaintiff claimed that he had been illegally terminated from his employment and was entitled to lost salary. He also claimed emotional distress damages for having been forced off the board of directors, and he argued that his stock sale did not preclude either claim. Our team of trial lawyers first persuaded the court to dismiss the employment claim, and then resolved the rest of the claim successfully. Decisive developments in the case included locating the plaintiff's pertinent medical records and forcing the production of his personal diary, which revealed multiple sources of distress beyond his employment termination.
- **Employer wins in non-compete fight and back pay.** Our client hired a new salesperson. Shortly after the salesperson started working, his former employer, a competitor in the same industry, sued the salesperson and our client, claiming breach of a non-compete agreement, and sought to prevent the salesperson from working for anyone in the industry anywhere in the world for a full year. The former employer actually secured a court order that temporarily forced the salesperson, who had also become our client, to stop working. After a hearing where we were able to present the full facts, the court declared the non-compete agreement unenforceable, allowing the salesperson to return to work immediately. He was also awarded back pay of more than \$31,000 for the time he was wrongfully prevented from working, and his new employer was awarded more than \$36,000 in attorneys' fees for having to defend the case.
- **Preventive attitude check of employee handbook.** A local restaurant, known as much for its atmosphere and attitude as for its food, asked Moss & Barnett to review its employee handbook. The quirky nature of the establishment was reflected in its handbook, which had irreverent comments and tongue-in-cheek quips. We modified the handbook so that it included all the essential elements of a good employee handbook, provided guidance on important personnel matters, and retained its original character.
- **Successful resolution of non-compete/non-solicitation dispute.** Our client was a top executive of a national retail grocery, supply chain, and wholesale distribution company. After leaving the company to take a position at one of its largest competitors, our client and his new employer were sued in federal court for breach of a non-competition and non-solicitation agreement, misappropriation of trade secrets, and interference with contractual relations. After persuading the court to refrain from issuing a temporary restraining order against our client that would have prevented him from working for the competitor, we successfully settled the dispute, and our client now enjoys unencumbered employment with his new employer.
- **Minority shareholder buyout limited.** When the client corporation abruptly fired its 49-percent owner, he sued for a premium, "fair value" buyout. After a "battle of experts" on radically differing valuations, the court ruled in favor of the company, drastically curtailing the amount and terms of the buyout.

Professionals

John P. Boyle

Craig A. Brandt

Leah E. DeGrazia

Jodi L. Johnson

Matthew P. Kostolnik

Christopher D. Stall

Taylor D. Sztainer

Misty J. Tautges

News

Craig A. Brandt Named a Qualified Neutral Under Rule 114 of the Minnesota General Rules of Practice

01.16.2024

Deadline for Minnesota Employers to Begin Providing Earned Sick and Safe Time to their Minnesota Employees is January 1, 2024

12.11.2023

Alert: Noncompete Agreements Banned in Minnesota: Action Items for Employers

05.31.2023

Alert: Employers: Good Reason to Review Your Separation Agreement Forms

Moss & Barnett Advocate (Winter 2023 edition), 03.21.2023

Timothy L. Gustin and Christopher D. Stall Elected to Moss & Barnett Board of Directors

02.23.2023

John P. Boyle and Jana Aune Deach Re-elected to Moss & Barnett Board of Directors

02.23.2022

Moss & Barnett Congratulates Our Lawyers Selected for Inclusion in *The Best Lawyers in America* for 2022

The Best Lawyers in America, 08.19.2021

New Legislation Gives Employers More Flexibility with PPP Loans

06.05.2020

Governor Walz Announces "Stay Safe Plan" Phases for Restaurants and Bars and Personal Care Services

05.20.2020

What You Need to Know About the Safely Reopening Minnesota's Economy Order
05.14.2020

Families First Coronavirus Response Act: What Employers Need to Know
03.20.2020

Employment Law Alert: Minneapolis Adopts Ordinance Imposing Additional Requirements on Employers
Moss & Barnett Advocate (Fall 2019 edition), 11.18.2019

Employment Law Alert: New Law for All Minnesota Employers
08.19.2019

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2019
07.05.2019

John P. Boyle and Jana Aune Deach Elected to Board of Directors and Beth A. Gliedman Elected a Shareholders of Moss & Barnett
05.02.2019

Moss & Barnett Expands with Arrival of Craig A. Brandt, Peter J. Kaiser, and Jeffrey A. Wieland
04.18.2019

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2018
07.05.2018

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2017
07.05.2017

Jodi L. Johnson Joins Moss & Barnett
05.23.2017

Aaron A. Dean, Susan A. King, and Taylor D. Sztainer Elected Shareholders of Moss & Barnett
04.04.2017

Moss & Barnett is Pleased to Recognize Taylor D. Sztainer
07.18.2016

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2016
07.05.2016

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2014
07.07.2014

Events

Moss & Barnett's Upper Midwest CPA Firm Summit, in partnership with the Minnesota Society of CPAs (MNCPA) (St. Cloud, MN)
The Regency, 912 West Saint Germain Street, Suite 204, St. Cloud, MN 56301, May 9, 2024

Moss & Barnett's Upper Midwest CPA Firm Summit, in partnership with the Minnesota Society of CPAs (MNCPA) (Minneapolis, MN)
Fifth Street Towers Engage Conference Center, 150 South Fifth Street, Third Floor | 150 Tower, Minneapolis, MN 55402, May 2, 2024

Current Issues in Minnesota Employment Law
MNCPA Management & Business Advisors 2022 Virtual Conference, 06.14.2022

Employment Law Update: Practical Guidance and COVID-19 Impacts
2021 MNCPA Management & Business Advisors Virtual Conference #MNCPAMBAC21, 06.21.2021

Publications

Minnesota bans covenants not to compete in new agreements with employees
GGI FYI Employment Law News (No. 15, Autumn 2023), 11.01.2023

Minnesota bans new employee covenants not to compete — What has changed and the implications for employers
Footnote, a publication of The Minnesota Society of Certified Public Accountants (October/November 2023)*, 10.09.2023

Cannabis Legalization Creates New Challenges for Minnesota Employers
Moss & Barnett Advocate (Spring/Summer edition), 08.15.2023

"Sick and Safe Leave" Policies on the Rise at City and State Levels
Moss & Barnett Advocate (Spring/Summer 2023 edition), 08.15.2023

To Disclose or Not to Disclose: A Primer on Data Breach Notification Rules
Moss & Barnett Advocate (Fall 2022 edition), 12.15.2022

Updates to the Minnesota "Nursing Mother's Statute"
Moss & Barnett Advocate (Summer 2022 edition), 08.15.2022

With the Great Resignation, Comes Great Employer Responsibility
Moss & Barnett Advocate (Spring 2022 edition), 05.13.2022



Are Employer-Mandated COVID-19 Vaccinations Worth a Shot?

Moss & Barnett Advocate (Winter 2021 edition), 02.25.2021

Is the Future Uncertain for Non-Compete Agreements?

Moss & Barnett Advocate (Summer 2020 edition), 09.02.2020

Important DTSA Provisions for Employers

Summer 2016 Firm Newsletter, 07.18.2016

Alert: New Rules Expand Overtime Pay Eligibility

Summer 2016 Firm Newsletter and Fall 2016 Firm Newsletter, 07.18.2016

Alert: Employee Handbooks

Summer 2016 Firm Newsletter, 07.18.2016

Alert: New Minneapolis Paid Sick Leave Ordinance

Summer 2016 Firm Newsletter, 07.18.2016

Alert: Women's Economic Security Act

Moss & Barnett Fall 2014 Firm Newsletter, 10.01.2014

Employment Law Legislative Update: Minimum Wage and Women's Economic Security Act

Employment Law Legislative Update, 04.11.2014

Unpaid Internship Programs Come Under Greater Scrutiny

Spring 2014 Firm Newsletter, 04.11.2014

Alert: Push to Expand Overtime Pay

Spring 2014 Firm Newsletter, 04.11.2014

Alert: "Ban the Box" Law Now in Effect

Spring 2014 Firm Newsletter, 04.11.2014

Alert: Criminal Record Inquiries

Fall 2013 Firm Newsletter, 09.03.2013

You're Fired – Please Sign Here

Summer 2011 Firm Newsletter, 07.01.2011

Potential Benefits Issues of Employee Terminations: Who Just Became Fully Vested?

Spring 2009 Firm Newsletter, 04.01.2009

EMPLOYMENT LAW ALERT: New Laws in 2008

February 2008 Newsletter, 02.01.2008

EMPLOYMENT LAW ALERT: President Bush Signs Law that Expands FMLA Leave to Families of Servicemembers

January 2008, 01.01.2008

EMPLOYMENT LAW ALERT: New Form I-9, Employment Eligibility Verification, Effective December 26, 2007

December 2007, 12.03.2007

EMPLOYMENT LAW ALERT: Minnesota Supreme Court Enforces Vacation Policy

November 2007, 11.01.2007

Related Practices

Business Law

Closely Held Businesses

Litigation

Claim Prevention and Employee Training

Our employment law team emphasizes prevention above all. Seeking to avoid costly litigation, we work with clients to develop a practical approach that addresses their concerns, culminating in timely and tested solutions. We also help implement compliance policies and procedures quickly and efficiently, minimizing disruption to our clients' business.

Our preventive services include:

- Affirmative action plans
- Alcohol and drug testing programs
- Disability and reasonable accommodation guidance
- Discrimination and harassment management
- Documentation of performance and discipline
- Education for employees on the changing legal environment
- Employee handbooks
- Employee safety
- Evaluation of an employee's obligations to former employers
- Executive compensation programs
- Interviewing and hiring
- Leaves of absence
- Non-competition, non-solicitation, and confidentiality agreements
- Reductions in workforce
- Separation agreements and releases
- Terminations

- Training for managers and staff
- Unemployment compensation guidance
- Wage and hour/overtime eligibility audits

Employer Defense and Risk Management

Despite due diligence and proper precautions, litigation can be inevitable. We regularly defend employment claims before state and federal courts, administrative agencies, and arbitrators.

Our experience includes:

- Breach of contract
- Non-dispute and trade secret violations
- Discrimination, including age, disability, race, national origin, religion, sex, and sexual orientation, and all forms of harassment
- Defamation
- Drug and alcohol testing
- Infliction of emotional distress
- Retaliation
- Tortious interference claims
- Wage and hour, including final pay issues
- Whistleblowing
- Wrongful discharge, severance, and termination

Appropriately assertive in the litigation process – from initial claim through trial – we begin every litigation representation with a detailed discussion and risk assessment of the claim. We encourage our clients to collaborate in the formulation of a strategic defense, which typically facilitates cost-effective and efficient resolutions.

Litigation and Asset Protection

There are occasions when company assets – such as intellectual property, employees, financial resources, or other proprietary property – will come under threat. In many of these instances, a timely and proactive approach is imperative. We act decisively to help clients anticipate threats related to:

- Breach of duty of loyalty and fiduciary duty
- Breach of employment contracts and quasi-contracts
- Breach of non-competition, non-solicitation, and nondisclosure agreements

- Collection of past due accounts receivable
- Employee safety concerns
- Employee theft
- Injunctive relief
- Misappropriation of trade secrets or other intellectual property
- Separation and termination agreements
- Tortious interference with contract

Full Service Counsel to Employers

Employment concerns rarely occur in isolation, and our clients often require counsel in several areas. Because we are a full service law firm, clients gain easy access to our resident legal teams in real estate, financial services, business law, family law, intellectual property law, and wealth preservation. Our internal collaboration with colleagues furthers our ability to add value and efficiency to the solutions we provide employers.

