



## → Brian D. Murphy

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Brian Murphy is a partner in the Labor and Employment practice group and is based in the New York office.

### Areas of Practice

Brian is an employment defense litigator defending management in all areas of employment law, with a particular focus on wage and hour class and collective action litigation under Rule 23 and the Fair Labor Standards Act, and class claims under the Fair Credit Reporting Act. In addition to defense litigation, Brian also provides counsel and advice to employers concerning workplace investigation of claims of discrimination, harassment, and retaliation, restrictive covenants, employment contracts, personnel policies, and reductions-in-force. Brian also develops training programs and conducts trainings for clients concerning appropriate workplace behavior and wage and hour compliance. Brian is the co-author of the *Wage and Hour Manual for New York Employers*, a first of its kind publication addressing wage and hour issues confronted by New York employers arising under federal, state, and local law, and the *Employer's Guide to COVID-19 and Emerging Workplace Issues*, the only comprehensive resource for employers in navigating and emerging from the pandemic.

### Honors

New York Metro Super Lawyers, *Super Lawyers*, 2019-2020

Labor and Employment, *Legal 500*, 2016-2018

New York Rising Star, *Super Lawyers*, 2013-2018

### Experience

*Robertson v. Williams-Sonoma, Inc., et al.*, L-1493-17 (N.J. Sup. Ct. Oct. 11, 2018) (granting motion for summary judgment dismissing various tort claims for injuries sustained at work pursuant to “special employer” and “intentional wrong” standards under New Jersey Workers’ Compensation Act)

*Scott v. Chipotle Mexican Grill, Inc.*, Case No. 12-CV-8333 (S.D.N.Y. Mar. 29, 2017) (order denying class certification, and granting decertification, of wage and hour claims based upon misclassification theory)

*Elite Model Management, LLC v. DAS Model Management, LLC*, Case No. 2017-001953-CA-01, (Miami-Dade Cty. Jan. 31, 2017) (order granting preliminary injunction and temporary restraining order on restrictive covenant and tortious interference claims)

*Echavarria v. Williams Sonoma, Inc.*, Case No. 15-6441 (D.N.J. Mar. 16, 2016) (order granting summary judgment and denying class certification of wage and hour claims based upon independent contractor status)

*Twomey v. Quad/Graphics, Inc.*, Case No. 13-CV-1109 (S.D.N.Y. Sept. 28, 2015) (order granting summary judgment to defendants on breach of contract, age discrimination, and national origin discrimination claims)

*Whitt v. Prosper Funding LLC*, No. 15-CV-0136 (S.D.N.Y. July 14, 2015) (granting motion to dismiss and compel arbitration of disability discrimination claim)

*Mann v. Staples, Inc.*, No. A-5188-10T4 (N.J. App. Div. Aug. 1, 2012) (affirming grant of summary judgment dismissing sexual harassment and retaliation claims)

*Nolley v. Swiss Reinsurance America Corp.*, No. 10-CIV-7626 (S.D.N.Y. Mar. 8, 2012) (granting summary judgment dismissing race discrimination and retaliation claims)

*Jaafari v. The Bank of Tokyo-Mitsubishi UFJ, Ltd.*, No. 10-CV-4060 (S.D.N.Y. Sept. 2, 2011) (granting summary judgment dismissing race, sex, religion, national origin, and disability discrimination claims, as well as whistleblowing claims)

*Turowski v. Triarc Companies, Inc.*, No. 09-CV-3979 (S.D.N.Y. Jan. 5, 2011) (granting summary judgment dismissing disability discrimination and failure to accommodate claims)

*Connolly v. The TJX Companies, Inc.*, No. 07-CV-3282 (E.D.N.Y. Dec. 30, 2010) (granting summary judgment dismissing hostile work environment and retaliation claims)

*Mekhitarian v. Deloitte & Touche (ICS), LLC*, No 07-CV-0412 (C.D. Cal. Nov. 3, 2009) (denying class certification of wage and hour claims based upon misclassification theory)  
*Dominguez v. Costco Wholesale Corp.*, No. 05-5717 (D. N.J. Mar. 10, 2009) (granting summary judgment on NJ Conscientious Employee Protection Act (whistleblowing) claim)

*Gimello v. Costco Wholesale Corp.*, No. A-1506-07T31506 (N.J. App. Div. Dec. 8, 2008) (affirming grant of summary judgment on NJ Conscientious Employee Protection Act (whistleblowing) claim)

*Perugini v. Stryker Orthopaedics*, No. 05-CV-1289 (D. Conn. Feb. 22, 2007) (granting summary judgment on age discrimination, sexual harassment, and retaliation claims)

*DeLuca v. The Bank of Tokyo-Mitsubishi UFJ, Ltd.*, No. 06-CIV-5474 (S.D.N.Y. Mar. 31, 2008) (granting summary judgment on age and national origin discrimination claims)

## Articles

- Pay Equity In the Era of COVID and the Black Lives Matter Movement  
*New York Law Journal*, 10.23.2020
- Workers' Comp Board Clarifies Scope of COVID-19 Compensability  
*Law.com*, 08.11.2020
- Equal Theories of Liability? Pay Disparity Claims Under the Equal Pay Act and Title VII of the Civil Rights Act  
*New York Law Journal*, 02.21.2020
- Remediating Risks Revealed in a Pay Equity Audit: Part III  
*Corporate Counsel*, 04.12.2019
- Pay Equity Audits as a Risk Identification Tool: Part II  
*Corporate Counsel*, 04.11.2019

- Recognizing and Remediating Gender Pay Equity Issues in the Workplace: Part I  
*Corporate Counsel*, 04.10.2019
- Emerging Trends In State And Local Equal Pay Efforts  
*Law360*, 10.22.2018
- Handling Federal, NY State And NYC Background Check Laws  
*Law360*, 02.20.2018
- Working Hard or Playing Hard? eSports and the Fair Labor Standards Act  
*New York Law Journal*, 11.21.2017
- Maximizing Confidentiality of Settlements of Individual Claims Under the FLSA  
*New York Law Journal*, 02.09.2017
- New FLSA Overtime Regulations: Planning for Costs of Compliance  
*New York Law Journal*, 11.07.2016
- Co-author, "Rethinking The Use of Credit Histories In the Hiring Process," *HRAdvisor*, March/April 2011
- Co-author, "Forever Yours: In 'Ashland-Management'", Confidential Knows No Bounds, *NYLJ*, March 23, 2009
- Co-author, "The Sword and Shield: Protective Orders Guard Against Unwarranted Depositions of Executives," *NYLJ*, October 3, 2008
- Co-author, "The Forgotten Overtime Exemption," *Workforce Management*, May 29, 2008

## Labor & Employment Law Blog Posts

- "New York State Releases First Guidance on New Paid Sick Leave Law," October 23, 2020
- "Reminder: Accrual Requirements Under New York State's New Paid Sick Leave Law Effective September 30, 2020," September 30, 2020
- "Independent Contractor v. Employee: DOL Releases Proposed Rule Clarifying Test for Classification of Workers," September 30, 2020
- "New York State Passes Guaranteed Sick Leave for Working New Yorkers Beyond COVID-19," April 7, 2020
- "Southern District of New York Invalidates State Ban on Mandatory Arbitration of Harassment and Discrimination," July 10, 2019
- "United States Department of Labor Issues Final Rule Concerning Minimum Salary Threshold to Qualify for Exemption from Overtime Under the Fair Labor Standards Act," March 8, 2019
- "Sheppard Mullin Secures Major Victory for Chipotle in Nationwide Misclassification Action By Demonstrating Variations Among Proposed Class Members," April 10, 2017
- "Second Circuit Imposes Individual Liability on New York Mayoral Candidate for Fair Labor Standards Act Settlement," July 12, 2013
- "Second Circuit Overturns Class Certification Order in Assistant Branch Manager Overtime Case," June 5, 2013

## Books

Employer's Guide To COVID-19 And Emerging Workplace Issues (Over 690 pages)  
04.21.2020

Wage and Hour Manual For New York Employers  
07.2019

## Media Mentions

19 Hiring Traps to Avoid  
*SHRM*, 10.23.2020

## Speaking Engagements

"Ask the Lawyers: The Coronavirus and Labor Law," NMHC OPTECH Conference & Exposition, November 16-19, 2020

## Events

Navigating COVID-19 Employment Issues In & Out Of The Office  
Webinar, 11.19.2020

Sheppard Mullin's Labor & Employment Law Update - Year In Review  
Webinar, 11.12.2020

Hot Topics in Privacy and Cyber Security in Uncertain Times: A Virtual Resource for In-House Privacy Teams  
Webinar, 07.15.2020

Getting Back to Business Webinar Series (Part 2)  
Planning and Best Practices for Employers in a Changed Workplace  
Webinar, 05.28.2020

Getting Back to Business Webinar Series (Part 1)  
Planning and Best Practices for Employers in a Changed Workplace  
Webinar, 05.21.2020

2019 Wage And Hour Laws (NY)  
Sheppard Mullin Office - 30 Rockefeller Plaza, 09.10.2019

Labor and Employment Law Spring Update - New York  
Spring 2019  
05.22.2019

Labor & Employment Law Update  
New York  
06.07.2018

Labor & Employment Law Update - Year in Review  
New York Fall 2017  
11.15.2017

Sheppard Mullin's Spring 2016 Labor & Employment Law Update  
06.22.2016

2014 Labor & Employment Year In Review  
11.13.2014

## Podcasts & Webinars

Sheppard Mullin's Labor & Employment Law Update - Year In Review  
11.12.2020

Hot Topics in Privacy and Cyber Security in Uncertain Times: A Virtual Resource for In-House Privacy Teams  
07.15.2020

Getting Back To Business Webinar Series: Session Two  
05.28.2020

Getting Back to Business Webinar Series: Session One  
05.21.2020

## Practices

Labor and Employment

Labor and Employment Counseling

Labor and Employment Litigation

Labor Union Management Relations

## Industries

Esports & Games

Hospitality

Retail

## Education

J.D., Saint John's University School of Law, *cum laude*, 2004

B.A., University of Buffalo, 2001

## Admissions

New York

United States Court of Appeals for the Second Circuit

United States District Court for the Southern, Eastern and Western Districts of New York