



## → Kevin J. Smith

**Special Counsel**  
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Kevin Smith is a special counsel in the Labor and Employment and Litigation Practice Groups in the firm's New York office.

### **Areas of Practice**

Kevin acts as trial and litigation counsel for all types of civil litigation, including employment, commercial, securities, and class action litigation before arbitral forums, state and federal courts, and local administrative and regulatory agencies.

In the labor and employment arena, Kevin routinely represents management in discrimination, harassment, retaliation, whistleblower and compensation disputes in federal and state courts, in arbitrations before the American Arbitration Association and the Financial Industry Regulatory Authority, and in proceedings before various federal and state administrative agencies. Kevin also counsels and advises clients on numerous employment law issues.

### *In-House Counsel Secondment*

In 2005, Kevin was seconded for several months to JPMorgan Chase & Co.'s employment law group, where he litigated employment and compensation disputes; managed outside counsel on certain litigation matters; and advised and counseled business units in connection with litigation and employment issues.

### *Previous Experience*

Prior to Kevin's arrival at Sheppard Mullin, he was special counsel at Kelley Drye. Prior to that, Kevin was an assistant corporation counsel with the City of New York, Office of the Corporation Counsel, where he defended the City of New York in employment discrimination and other civil actions. While there, he tried, as either first or second chair, seven cases to verdict.

## **Honors**

Labor and Employment, *Legal 500*, 2018

## **Experience**

- Successfully defended New York-based energy commodities broker in a hotly contested dispute with one of its former energy brokers.

- Defended securities brokerage firm against breach of contract and business tort claims in arbitration hearings before Financial Industry Regulatory Authority.
- Defended healthcare institution against retaliation claims in New York State administrative agency hearings.
- Prosecuting breach of contract and tortious interference claims against former employee and competitor on behalf of international broker-dealer client pending before Financial Industry Regulatory Authority.
- Successfully defended to favorable settlement banking and investment services client against suit by bondholders of bankrupt debt issuer and prosecuting third-party claims against bond underwriters. Managed and conducted all aspects of litigation, including depositions, document disclosure, motion and appellate court practice, trial preparation and trial. See *A.G. Capital Funding Partners L.P. v. State Street Bank and Trust Co.*, 11 N.Y.3d 146 (2008).
- Second chair trial counsel for JPMorgan Chase in billion dollar lawsuit against 11 insurance companies relating to surety bonds on commodities transactions with Enron. A favorable settlement for our client was reached as the jury was deliberating after one-month trial.
- Represented brokerage firm in several regulatory matters and shareholder class action suits for alleged securities fraud, including conducting internal investigation and prepared defense of class action suits.
- Defended multinational client in certified class action for alleged violations of state employment laws, breaches of contract, and business torts.
- Defended to successful settlement numerous restaurant and hospitality clients in Fair Labor Standards Act collective actions and putative class actions for alleged failure to pay minimum and overtime wages.
- Defending numerous restaurant and hospitality clients in Fair Labor Standards Act collective actions and putative class actions for alleged failure to pay minimum and overtime wages.
- Defended life insurer client in action for violations of Title VII and New York Executive Laws for alleged age, race and national origin discrimination.
- Successfully defended medical college client against employee whistleblower claims under New York state whistleblower laws, obtaining summary judgment on client's behalf.
- Successfully prosecuted action for temporary restraining order and preliminary injunction preventing former employee from breaching client's non-compete and non-disclosure agreement.
- Defending not-for-profit client in action for violations of the Family and Medical Leave Act and New York City Human Rights law.
- Defending life insurer client in action for violations of Title VII and New York Executive Laws for alleged age, race and national origin discrimination.
- Successfully defended medical college client against employee whistleblower claims under New York state whistleblower laws, obtaining summary judgment on client's behalf.
- Successfully prosecuted action for temporary restraining order and preliminary injunction preventing former employee from breaching client's non-compete and non-disclosure agreement.
- Successfully defended at three-day evidentiary hearing, Department of Labor claims that client improperly classified employees as independent contractors.
- Successfully defended retail client in Fair Labor Standards Act suit, obtaining summary judgment on client's behalf. *Caci v. The WIZ of Lake Grove, Inc.*, 267 F. Supp. 2d 297 (E.D.N.Y. 2003).

## Articles

- The Underutilization of "Racketeering" Claims in Restrictive Covenant Cases  
*New York Law Journal*, 10.27.2020
- Employer Liability for Third-Party Sexual Harassment  
*Employment Relations Today*, 01.19.2018
- Employers' Legal Obligations to Accommodate Employees with Service Animals in the Workplace  
*Employment Relations Today: Wiley Periodicals*, Summer 2017
- Conducting Effective Internal Investigations  
*Employment Relations Today: Wiley Periodicals*, Spring 2017
- An Employer's Guide to the Fair Credit Reporting Act  
*Employment Relations Today*, Spring 2017
- Not So Happy Together? How Expanding Employers Can Avoid Single or Joint Employer Liability  
*Employer Relations Today*, Fall 2016
- Crafting a Social-Media Policy You Can "Like"  
*Employer Relations Today*, Summer 2016
- Creating and Implementing Codes of Ethical Conduct  
*Employment Relations Today*, Winter 2016
- Dealing with Disease in the Workplace  
*Wiley Periodicals, Inc.*, Winter 2016
- Keeping the Company Holiday Party Holly and Jolly for All  
*Wiley Online Library*, 10.20.2015
- "Electronic Monitoring in the Workplace," *Employment Relations Today*, April 2015
- "Conducting Thorough Job Analyses and Drafting Lawful Job Descriptions," *Employment Relations Today*, Winter 2015
- "Accommodations Under the Pregnancy Discrimination Act," *Employment Relations Today*, October 2014
- "Drafting an Effective Employee Handbook," *Employment Relations Today*, April 2014
- "Bring Your Own Device - Challenges and Solutions for the Mobile Workplace," *Employment Relations Today*, Winter 2014
- "Are Your Unpaid Interns Actually Employees?" *Employment Relations Today*, Fall 2013
- "U.S. Supreme Court Rulings In Arbitration And Employment Matters," *The Metropolitan Corporate Counsel*, September 2013
- "Does Your Company's Smartphone Policy Create Liability under the Fair Labor Standards Act?" *Employment Relations Today*, Summer 2013

## Labor and Employment Law Blog Posts

- "U.S. Department of Labor Announces Withdrawal of Trump-Era Independent Contractor Rule," May 10, 2021
- "New York Proposes Biometric Privacy Act With Private Right of Action," January 27, 2021
- "Battle Over Rideshare Worker Classification Continues: New York Supreme Court Holds Uber Drivers Are Employees, Entitled to Unemployment Insurance," January 8, 2021

- "New York's First Department Appellate Division Highlights the Stringent Requirements for Reasonably Accommodating Individuals with Disabilities Under New York City Human Rights Law," July 1, 2020
- "Drastic Changes Coming to U.S. Offices as the CDC Recommends An Office Makeover," June 2, 2020
- "New York's Highest Court Narrowly Construes New York City Human Rights Law To Bar Disability Discrimination Claims Based on Perceived Alcoholism," November 2, 2017
- "Update to NYC Salary History Inquiry Ban," May 22, 2017
- "NYC Council Approves Salary History Inquiry Ban," April 12, 2017
- "New Year, New Rules for Employers Doing Business in New York," January 6, 2017
- "Massachusetts – The Latest Jurisdiction to Update Its Pay Equity Laws," August 18, 2016
- "New York City Human Rights Law Expanded To Protect Caregivers," January 21, 2016
- "NLRB Weighs-In on Franchise Joint Employers," June 5, 2015
- "What is Retaliation in the Second Circuit Under the FLSA?" May 21, 2015
- "New York Court Finds That Plaintiff Who Never Worked a Day For Company Is Not Entitled To A \$350,000 Performance Bonus," February 2, 2015
- "Appellate Division Panel Issues Ruling Broadly Interpreting New York State Human Rights Law," January 23, 2015
- "Employer Permitted to Use "After-Acquired" Evidence at Discrimination Trial," October 22, 2014
- "Third Circuit Says Classwide Arbitration a Matter for Courts to Decide," August 7, 2014
- "Second Circuit Finds that Entry-Level Audit Associates at Accounting Firm are Exempt from Federal Overtime Requirements," July 31, 2014
- "Second Circuit Finds Possible Pretext in Vague Justification for Non-Transfer," July 17, 2014
- "Another Circuit Court Finds President's NLRB Recess Appointments Unconstitutional," August 9, 2013
- "New Jersey Provides Unpaid Leave to Victims of Domestic Violence," July 30, 2013
- "New Jersey Supreme Court Expands State Law Retaliation Claims," July 19, 2013
- "Second Circuit Imposes Individual Liability on New York Mayoral Candidate for Fair Labor Standards Act Settlement," July 12, 2013

## Media Mentions

Litigator of the Week Runners-Up and Shout Outs  
*The American Lawyer*, 06.03.2022

Uber vs. New York  
*Legal Talk Network*, 02.08.2021

4 Tips For Handling Requests For Animals In The Workplace  
*Law360*, 11.12.2019

## Speaking Engagements

Program Chair, "New York State Bar Association's Commercial Litigation Academy 2014," June 5-6, 2014

## Events

2014 Labor & Employment Year In Review  
11.13.2014

## Memberships

New York State Bar Association - Member, Executive Committee Commercial and Federal Litigation Section;  
Chair, Committee on Continuing Legal Education  
Federal Bar Council

## Practices

Labor and Employment  
Litigation  
Healthcare

## Industries

Financial Services  
Healthcare

## Education

J.D., Brooklyn Law School, 1997, *cum laude*  
B.A., State University of New York, Albany, 1992, *cum laude*

## Admissions

New York  
U.S. Court of Appeals, Second and Ninth Circuits  
U.S. District Courts, Southern, Eastern, and Northern Districts of New York