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Mark J. Girouard

Shareholder & Vice Chair, Labor & Employment

Labor and Employment

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Biography

Mark represents employers in single-plaintiff cases, private class actions, and litigation against the EEOC and other government agencies, including defending numerous nationwide discrimination and wage-and-hour class and collective actions.

Mark also advises employers regarding a wide range of state and federal employment law issues, helping them proactively manage the risks associated with pay equity, pre-employment assessment, background check and drug screening, military leaves, family and medical leaves, disability accommodations, and FLSA and state wage-and-hour compliance, among others. In addition to advising and defending businesses ranging from startups to Fortune 50 corporations, he has nearly two decades of experience representing municipal entities, including serving as labor and employment counsel to several Minnesota cities.

Education

University of Minnesota Law School, J.D., *cum laude*, 2000

Stanford University, M.A.

Wesleyan University, B.A., with high honors

Bar Admissions

Minnesota State Courts

U.S. District Court for the District of Minnesota

U.S. District Court for the Northern District of New York

U.S. Court of Appeals (7th Circuit, 8th Circuit, 9th Circuit, 11th Circuit)

Key Practice Experience

- Discrimination Defense
- EEOC Class Investigations and Litigation Defense
- FLSA/Wage-and-Hour Advice/Defense
- Pay Equity Compliance
- Equal Pay Audits, Counseling and Defense
- Federal Contract Compliance
- Pre-Hire Testing and Background Check Advice/Defense
- Leave of Absence and Disability Advice/Defense
- Labor Management Relations
- Preventive Employment Counseling
- Workplace Investigations
- Appellate argument
- Data Privacy and Security

Key Industry Experience

- Retail
- Technology
- Hospitality
- Health Care
- Financial Services
- Cities and Counties
- Public and Private Educational Institutions

Representative Matters

Wage and Hour

Defend employers in wage-and-hour and misclassification claims; conduct wage-and-hour compliance audits; advise companies on wage-and-hour policies and practices.

- *Crawford, et al v. Cerner Corporation*: defended Cerner against a Missouri state-wide FLSA misclassification case involving tech. support roles. Reached settlement that did not require reclassification of role.
- *Taylor, et al v. Cerner Corporation, et al.*: defended Cerner against a Missouri state-wide FLSA misclassification case involving tech. support roles. Reached settlement that did not require reclassification of role.
- *Gifford et al v. Target Corporation (FLSA)*: defended Target against a putative nationwide class action alleging misclassification of store executives under the FLSA. Successfully moved to disqualify plaintiffs' counsel. Secured voluntary dismissal of class claims and favorable resolution of remaining individual claims.
- *Stroud et al v. Target Corporation (FLSA)*: defended Target against a putative nationwide class action alleging misclassification of warehouse executives under the FLSA. Defeated plaintiffs' motion for conditional class certification. Secured favorable resolution of remaining individual claims.
- *Delsing et al v. Starbucks (state wage-and-hour)*: defended Starbucks against a statewide class action alleging violations of the Minnesota Fair Labor Standards Act and Minnesota regulations regarding distribution of tips. Defeated class certification.

Discrimination

Defend employers in EEOC class investigations and claims and private class action claims, as well as in single-plaintiff lawsuits and agency charges; advise employers and conduct audits regarding state and federal pay equity, recruiting, hiring, and talent management practices.

- *EEOC (Chicago Office) v. X Corporation*: defended Fortune 50 employer against a nationwide investigation of the Chicago Office of the EEOC alleging that the employer's criminal background check policy violated Title VII of the Civil Rights Act of 1964. The EEOC agreed not to commence litigation.
- *EEOC (Atlanta Office) v. X Corporation (Directed Investigation)*: defended Fortune 50 employer against a nationwide Directed Investigation alleging age discrimination in hiring. This matter is still in confidential proceedings.
- *EEOC (Minneapolis Office) v. X Corporation (Commissioner's Charge)*: defended Fortune 50 employer against Commissioner's Charge alleging a nationwide Title VII and ADA class claim involving pre-employment testing. Negotiated a resolution with the EEOC.
- *Lee v. Target Corp.* (reprisal): secured summary judgment on all claims.
- *Gifford v. Target Corp.* (age discrimination and FMLA): secured voluntary dismissal of FMLA reprisal claim and summary judgment on state-law age discrimination and reprisal claims.

Other Employment Defense

Defend employers in leave, benefits, and labor-related litigation, arbitration, and agency proceedings.

- *Brody v. Starbucks Coffee Company* (FMLA): secured summary judgment on all claims.
- *In re. Starbucks Coffee Company* (unfair labor practices): obtained withdrawal or dismissal of fifteen related NLRB charges.
- *Seipel et al. v. Marsden Building Maintenance, LLC* (ERISA fringe fund): secured summary judgment on employee benefit funds' claim for over \$1 million in contributions.
- *Lee v. Fresenius Medical Care, Inc.* (employment contracts): represented Minnesota Chamber of Commerce as amicus before the Minnesota Supreme Court, helping obtain reversal of decision limiting employers' ability to contract regarding vacation pay.

Recognitions and Honors

- Selected in Minnesota "Rising Stars" for 2007, 2008, 2009, and 2010, *Minnesota Law and Politics Magazine*
- Law Clerk for the Honorable Frederic Block, Judge, U.S. District Court, Eastern District of New York
- Law Clerk for the Honorable Bruce D. Willis, Judge, Minnesota Court of Appeals
- Phi Beta Kappa, Wesleyan University

Publications and Presentations

- "Big Data, Bigger Risk: Recognizing and Managing the Perils of Using Algorithms in Recruiting and Hiring," *RAIL The Journal of Robotics, Artificial Intelligence & Law*, July-August 2019
- "Data Privacy in a GDPR World: Tips and Tricks," SIOP Annual Conference (2019)
- "Grasping at Straw Men: Implications of Novel Title VII Allegations," SIOP Annual Conference (2019)
- "Opening the Black Box: Legal Defensibility of Machine Learning in Assessment," SIOP Annual Conference (2019)
- "Shiny Pennies: Influence of AI and Neuroscience Innovations on Selection," SIOP Annual Conference (2018)
- "Age Discrimination in the Workplace: Practical Solutions for Overcoming the Most Common Challenges," ACI Forum on Defending and Managing Employment Discrimination Litigation (2016)
- "Can the EEOC Be Trusted to Police Its Own Compliance?," *The Corporate Counselor* (2015)
- "Obligations to Disabled Veterans," Minnesota CLE Web Seminar (2012)
- "Hurt Locker Meets the Workplace," MSBA Labor and Employment Law Section Seminar (2011)
- "Pre-Employment Assessments," Upper Midwest Employment Law Institute (2010)
- "EEOC to Revise Rules on Disability and Age Discrimination," *Minnesota Lawyer* (2009)
- "Recent Developments in Age-Discrimination Law," *The Hennepin Lawyer* (2009)
- "Defense Authorization Act's FMLA Expansion," Workplace Human Resources and Safety Web Seminar (2008)
- "Marching Home – and into the Workplace," *In-House Defense Quarterly* (2008)
- "Recent Developments in Federal Civil Procedure," Minnesota FBA Federal Practice Seminar (2007)

Community Engagement

- Pro bono volunteer, The Advocates for Human Rights
- Past board member, The Advocates for Human Rights