



BRIAN D. BARGER

PARTNER

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Brian has practiced management labor and employment law for over 25 years, with extensive experience representing public and private employers with local, national and multinational operations and a practice focused on:

- **Federal Contractor Defense and Compliance.** Brian's primary focus is defending clients in affirmative action class systemic discrimination enforcement litigation, compliance audits and complaint investigations brought throughout the country by the U.S. Department of Labor, Office of Federal Contractor Compliance Programs (OFCCP). He regularly works on preparing and updating annual affirmative action plans and counseling clients regarding compensation analyses, hiring and promotion systems, and federal record keeping requirements. He has also worked with national and international clients on electronic database, applicant tracking and selection system design and reporting.
- **Corporate Employment Counseling / Risk Management.** Brian regularly counsels employers regarding general personnel matters and corporate employment risk management. Such counseling includes advice during corporate transactions, restructuring efforts and reductions in force; regarding hiring and pay practices, employee leave policies and related laws; and involving matters related to hiring and firing employees, covenants not to compete, employment testing and privacy. Brian regularly counsels clients and their boards in executive compensation matters, contracts and other strategic negotiations. Brian is also co-author of the North Carolina chapters of the *Annual Survey on Employment Libel and Privacy Law* (1999 to present), and he is Editor of McGuireWoods' *Work Cite* employer legal update.
- **Governmental Investigations and Claim Defense.** Brian has extensive experience representing public and private employers with local, national and multinational operations in Title VII, ADA, ADEA, FMLA, Section 1983, wrongful discharge, unfair labor practice litigation, and FLSA wage and hour disputes, audits, claims and related internal and external investigations. Brian also investigates complaints regarding workplace discrimination, harassment, regulatory violations, and other misconduct.

Brian frequently lectures and provides training on affirmative action, discrimination law, hiring and firing employees, sexual harassment, workplace violence, FLSA compliance, and employee testing/privacy.

While earning his law degree at the University of Virginia, he was recipient of the prestigious Earl K. Shawe Labor Relations Award.

EXPERIENCE

- Defense of clients in OFCCP compliance reviews and resolutions of E.O. 11246, VEVRAA and Rehabilitation Act issues with OFCCP District and Regions nationally.
- Representation of multi-national clients in federal contractor affirmative action compliance efforts, including development of affirmative action plan templates and forms, selection system review and analytics, annual HR team and recruiter training, and internal compliance reviews and reporting at targeted locations.
- Representation of clients regarding the design and structure of global online applicant tracking, selection and reporting systems used for U.S. affirmative action reporting.
- National outside employment “triage” counsel for public and private companies, providing advice and support to HR teams and in-house counsel in connection with internal employee investigations, covenant not to compete development and enforcement, employee leave and other disputes, EEOC/DOL charges and related litigation, employee restructuring and facility closings, corporate acquisitions and transactions, data privacy, and strategic HR risk analysis.
- Representation of corporate boards in senior executive contract development, tax analysis, negotiation and implementation.
- Representation of employers in multi-unit reorganizations, structural realignments and WARN reductions in force.
- Defense of national client in one of the largest OFCCP multi-site compliance audits in the past 10 years and its related resolution, involving 5 years of alleged class activity, 20,000+ applicants and underlying federal contracts worth more than \$1.4 billion.
- Representation and defense of clients in senior executive-level investigations, governmental reporting and related discipline / separations.

PRACTICES

Labor & Employment

Affirmative Action And OFCCP Compliance

Employee Benefits

Executive Compensation

Government Contracts

INDUSTRIES

Healthcare

Life Sciences

Education

Food & Beverage

Nonprofit & Tax Exempt Organizations

Defense, National Security & Government Contracting

EDUCATION

- University of Virginia School of Law, JD, with Honors, Phi Beta Kappa, Order of the Coif, 1990
- University of Virginia, BA, with High Distinction, 1987

ADMISSIONS

- North Carolina
- U.S. Court of Appeals for the 4th Circuit
- U.S. District Court for the Eastern District of North Carolina
- U.S. District Court for the Middle District of North Carolina
- U.S. District Court for the Western District of North Carolina

AFFILIATIONS

Member, North Carolina Bar Association

Member, Operations and Finance Committee, Mecklenburg County Bar Association

Member, Employment Libel and Privacy Law Committee, National Media Law Resource Center

Member, Manufacturer's Council, Charlotte Chamber of Commerce

Member, Board of Directors, Charlotte YMCA Y-Guides

Member, Board of Directors, Siskey Family YMCA

Coordinator, Room In The Inn

Member, Administrative Board, St. Stephen UMC

RECOGNITION

Earl K. Shawe Labor Relations Award, University of Virginia School of Law

Order of the Coif, University of Virginia School of Law

Phi Beta Kappa, University of Virginia

Selected for inclusion in *The Best Lawyers in America*, Employment Law - Management, Litigation - Labor and Employment, Woodward/White, Inc., 2013, 2015-2020

Selected for inclusion into the North Carolina Pro Bono Honor Society, 2018

Named to "North Carolina Legal Elite," Labor & Employment, *Business North Carolina*, 2005

George Williams Award for Volunteer Service, YMCA of Greater Charlotte

EVENTS

- Speaker, Paid Leave Under the Families First Coronavirus Response Act: Key Concepts, Takeaways and Surprises in the New DOL Regulations, April 7, 2020
- Speaker, COVID-19 Employment Webinar Series: Legal Guardrails, Guides and Developments, March 24 and March 27, 2020
- Speaker, "A Fistful of Dollars – Common Non-Profit Wage and Hour Law Mistakes 'Challenges'," 17th Annual Nonprofit Seminar: Staying Current in a Changing Landscape, September - November 2019
- Speaker, "2019 National Industry Liaison Group Conference Recap," OFCCP Federal Contractor Webinar, August 27, 2019
- Speaker, Hot Topics and Best Practices : North Carolina Continuing Care Retirement Communities , May 21, 2019
- Speaker, "OFCCP's Year in Review: 2018 Trends, Tips and Takeaways," OFCCP Federal Contractor Webinar Series, January 24, 2019
- Speaker, "Me Too, Et Tu, and other Employment Hot Topics," 16th Annual Nonprofit Seminar, October - November 2018
- Speaker, "Employment Primer for Nonprofits," 15th Annual Nonprofit Seminar: Back to Basics, September - November, 2017
- Panelist, Trump Administration, Federal Contractors and OFCCP – Where Are We?, McGuireWoods LLP Webinar, September 14, 2017
- Speaker, "Corporate Diversity Initiatives: Evaluating and Managing Relative Component Risk," Industry Liaison Group (ILG) National Conference, San Antonio, TX , August 3, 2017
- Panelist, "What Federal Contractors (and NON-Contractors) Need to Know," OFCCP's New Sex Discrimination Guidelines, August 25, 2016
- Speaker, OFCCP's New Sex Discrimination Guidelines: Everything You Always Wanted to Know but Were Afraid to Ask, Bloomberg BNA Webinar, July 19, 2016
- Speaker, What's Keeping Us Up at Night?, Department of Labor's New Final Overtime Rule , June 8, 2016
- Co-Speaker, "Best Practices for Board and Staff Orientation," 12th Annual Nonprofit Seminar - Charities: More Change on the Horizon?, September 10, 2014

INSIGHTS

- Author, DOL Issues Families First Coronavirus Response Act Leave Regulations for Employers, *McGuireWoods Legal Insights*, April 1, 2020
- Author, CARES Act Changes to the Families First Coronavirus Response Act, *McGuireWoods Legal Insights*, March 27, 2020
- Author, FFCRA Denies Tax Credits to State and Local Government Employers, *McGuireWoods Legal Insights*, March 26, 2020
- Author, COVID-19: With Students Safely Home, What's Next for Educational Institutions?, *McGuireWoods Legal Insights*, March 23, 2020
- Author, Cybersecurity and Infrastructure Security Agency Issues Initial Guidance on Essential Workers, Sectors, *Subject to Inquiry*, March 23, 2020
- Author, Essentials of the Families First Coronavirus Response Act, *McGuireWoods Legal Insights*, March 20, 2020
- Author, Navigating Government Shutdowns: Legal Issues for Federal Contractors, *McGuireWoods Legal Insights*, January 23, 2018
- Author, DOL Adopts "Primary Beneficiary" Test for Unpaid Internships, *McGuireWoods Legal Insights*, January 11, 2018
- Author, Don't Ask, Do Tell: Calif. Adopts New Salary History, Pay Scale Requirements, *McGuireWoods Legal Insights*, October 25, 2017
- Author, 9th Circuit to Reconsider Employer Use of Salary History During Hiring , *McGuireWoods Legal Insights*, September 21, 2017
- Author, Court Strikes Down Obama Administration Overtime Rule , *McGuireWoods Legal Insights*, September 1, 2017
- Author, EEO-1 Pay Reporting Requirements Suspended Immediately Pending OMB Review, *McGuireWoods Legal Insights*, August 30, 2017
- Author, Acting EEOC Chair Addresses Status of EEO-1 Reporting Changes, Other Issues, *McGuireWoods Legal Insights*, August 3, 2017

- Author, Now Invalid: Blacklisting Regulations for Government Contractors, *McGuireWoods Legal Insights*, March 29, 2017
- Author, Rescinded Guidance on Transgender Students' Access to Sex-Segregated Facilities Raises Questions for Educators, *McGuireWoods Legal Insights*, February 24, 2017
- Author, Federal Court Temporarily Halts Nationwide Enforcement of New DOL Overtime Rule, *McGuireWoods Legal Insights*, November 23, 2016
- Author, Government Contractor "Blacklisting" Regs Take Effect Oct. 25 — Fast Facts, *McGuireWoods Legal Insights*, October 24, 2016
- Author, Administration Releases Final Blacklisting Regulations for Government Contractors, *McGuireWoods Legal Insights*, August 26, 2016
- Author, NLRB: Student Teaching Assistants Can Be Employees Under the NLRA, *McGuireWoods Legal Insights*, August 24, 2016
- Author, OFCCP Director Shiu Addresses Federal Contractors at NILG Conference, *McGuireWoods Legal Insights*, August 4, 2016
- Author, EEOC's Revised Annual Collection of Pay Data on EEO-1 Forms, *McGuireWoods Legal Insights*, July 15, 2016
- Author, OFCCP Updates Audit Scheduling Letter and Itemized Listing for Federal Contractors, *McGuireWoods Legal Insights*, July 8, 2016
- Author, OFCCP Issues Updated Sex Discrimination Guidelines, *McGuireWoods Legal Insights*, June 16, 2016
- Author, FAQs on Department of Labor's New FLSA Overtime Rule, *McGuireWoods Legal Insights*, June 13, 2016
- Author, Department of Labor Issues Final Rule Expanding Overtime Eligibility, *McGuireWoods Legal Insights*, May 18, 2016
- Author, Fourth Circuit Rules that Title IX Extends to Transgender Bathroom Access, *McGuireWoods Legal Insights*, April 21, 2016
- Author, EEOC Proposes Burdensome Annual Collection of Pay Data on EEO-1 Forms, *McGuireWoods Legal Insights*, February 2, 2016
- Author, Planning for a Possible Government Shutdown: Labor and Employment Issues for Government Contractors, *McGuireWoods Legal Insights*, September 24, 2015
- Author, Planning for a Government Shutdown, *McGuireWoods Legal Insights*, September 24, 2015
- Author, EEOC Set to Roll Out Digital Charge Pilot Program Starting May 1, *McGuireWoods Legal Insights*, May 1, 2015
- Author, HR-Related Legal Issues in Addressing Ebola Concerns at Work, *McGuireWoods Legal Insights*, October 22, 2014
- Author, President Obama Signs Executive Order Mandating Government Contractor and Subcontractor Disclosure of Labor Law Violations, *McGuireWoods Legal Insights*, August 7, 2014
- Author, Divided Supreme Court Invalidates Illinois Law That Required Home Health Aides to Pay Union Dues, *McGuireWoods Legal Insights*, July 2, 2014
- Author, Obama Takes Executive Action Regarding Discussions of Pay at Work and Compensation Reporting, *McGuireWoods Legal Insights*, April 11, 2014
- Author, Court Rules Depressed Employee's Vacation Request Does Not Qualify For FMLA Leave, *McGuireWoods Legal Insights*, April 2, 2014
- Author, North Carolina Enacts Regulatory Reform Act Of 2013, *McGuireWoods Legal Insights*, August 23, 2013
- Author, Court Clears Way for September 8 Implementation of E-Verify for Federal Contractors, *McGuireWoods Legal Insights*, September 1, 2009
- Author, DHS Supports E-Verify for Federal Contractors But Not SSN "No-Match" Rule, *McGuireWoods Legal Insights*, July 14, 2009
- Author, Supreme Court Overturns Controversial Sotomayor Reverse Race Discrimination Decision, *McGuireWoods Legal Insights*, June 29, 2009
- Author, Avoiding Common Affirmative Action Plan Design Mistakes as a Federal Contractor, *McGuireWoods Legal Insights*, June 26, 2009
- Author, E-Verify Requirements for Federal Contractors Delayed Until September 8, *McGuireWoods Legal Insights*, June 11, 2009
- Author, Homeland Security Announces Shift in Worksite Immigration Enforcement to Target Employers, *McGuireWoods Legal Insights*, May 5, 2009
- Author, H1N1 Flu Outbreak: Important Things to Know and Do - NOW, *McGuireWoods Legal Insights*, April 30, 2009
- Author, Implementation of E-Verify Rule for Federal Contractors Delayed Until June 30, 2009, *McGuireWoods Legal Insights*, April 20, 2009
- Author, A New OFCCP Record - Over \$67 Million Obtained From Government Contractors in Fiscal Year 2008, *McGuireWoods Legal Insights*, March 9, 2009
- Author, Suspension of E-Verify Rule for Federal Contractors Extended Until May 21, 2009, *McGuireWoods Legal Insights*, January 30, 2009
- Author, Final Revised FMLA Regulations Issued: Highlights of the Good, the Bad and the Ugly, *McGuireWoods Legal Insights*, November 26, 2008
- Author, Voting Leave Requirements in the Land of Red and Blue, *McGuireWoods Legal Insights*, October 31, 2008
- Author, September 30 Deadline Looms: How to Properly Complete Your 2008 EEO-1 Report, *McGuireWoods Legal Insights*, September 8, 2008
- Author, Quon v. Arch Wireless: Ninth Circuit Increases Government Employee Privacy for Electronic Communications, *McGuireWoods Legal Insights*, July 14, 2008
- Author, The Good, The Bad and The Obvious: DOL Issues New Proposed FMLA Rules, *McGuireWoods Legal Insights*, February 22, 2008
- Author, Top 5 Federal Contractor Applicant Flow Log Mistakes, *McGuireWoods Legal Insights*, January 17, 2008

mutually agree that we will keep it confidential. Past legal successes described on this website are not indicators of future results. The outcome of particular legal matters is dependent upon the facts and law applicable to the matters.