Michael Sciotti

He | Him | His

Partner

Syracuse

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Education

- Syracuse University College of Law, *Summa Cum Laude*, LLM
- Syracuse University College of Law, *Cum Laude*, JD
- Rochester Institute of Technology, *Summa Cum Laude*, BA

Practices & Industries

- Labor & Employment
- Health & Human Services Providers
- Health Care

Admitted to Practice

- New York
- District of Columbia

Court Admissions

- US Court of Appeals for the Second Circuit
- US District Court for the Eastern District of New York
- US District Court for the Northern District of New York
- US District Court for the Southern District of New York
- US District Court for the Western District of New York
- US Supreme Court

Biography

Michael is a trusted advisor, trainer, and litigator to hundreds of employers on labor and employment matters. His practice includes defending employers, owners, and members of management in all types of discrimination, harassment, whistleblower, and retaliation claims brought under Title VII, ADEA, ADA, FMLA, GINA, NYS Human Rights Law, and Labor Law. Michael also defends wage-and-hour actions and claims, including class-action lawsuits, brought under federal and state law. He has tried nearly two dozen cases to verdict in federal and state court and before the NYS Division of Human Rights.

Michael also provides day-to-day counseling for employers on all aspects of labor and employment law and conducts internal investigations; audits; and supervisory and employee training, including sexual harassment-prevention training, on a regular basis. He has given over 1,100 labor and employment presentations to organizations that include the Society for Human Resource Management, the American Payroll Association, the American Corporate Counsel Association, the New York State Society of Certified Public Accountants, the Northern District of New York Federal Bar Association, the New York State Bar Association, and Lorman Education Services.

Bar Associations

- American Bar Association
- Northern District of New York Federal Court Bar Association, Former President, Vice President, Trustee, and Pro Bono Committee Chair
- New York State Bar Association, Labor Law Section
- Onondaga County Bar Association
- Washington DC Bar Association

Selected Memberships & Affiliations

- US District Court for the Northern District of New York, Alternative Dispute Resolution Committee Member and Court-Appointed Mediator
- American Payroll Association
- Society of Human Resource Management

Representative Experience

- Represented a chain barbecue restaurant in a class action lawsuit alleging sexual harassment under New York State and New York City law brought by two former female employees. The court denied class certification, adopting all of the defendant's arguments in opposition.
- Represented an employer in a criminal conviction discrimination claim filed by an applicant with the New York State Division of Human Rights. After conducting a fact-finding conference, the state issued a no probable cause determination in favor of the employer.
- Successfully defended a trucking company at trial and in the subsequent appeal to the NYS Supreme Court, Appellate Division, Third Department, from an attempt by the NYS Department of Labor to reclassify 300 independent contractor truck drivers as employees.
- Resolved a highly contentious sexual-harassment claim for a physician group by convincing plaintiff’s counsel to mediate as opposed to litigating. The claim was resolved much quicker and cheaper than if the matter had been litigated.
- Won a summary judgment motion and subsequent appeal by the plaintiff to the US Court of Appeals for the Second Circuit for a large school district on an age discrimination claim under federal law.
- Won an appeal before the NYS Supreme Court, Appellate Division, Fourth Department on behalf of an employer, dramatically reducing the sexual harassment verdict rendered by the NYS Division of Human Rights.
- Tried a case in the US District Court for the Northern District of New York for a nursing home where the male plaintiff claimed he was a victim of workplace sexual harassment. The court dismissed all of the plaintiff’s claims at the conclusion of his case under Rule 50(a) of the Federal Rules of Civil Procedure. The dismissal was subsequently affirmed by the US Court of Appeals for the Second Circuit.
- Resolved a dispute through negotiation for an employer where the NYS Workers’ Compensation Board served an overbroad subpoena *duces tecum*.
- Served as mediator in a hotly litigated class action lawsuit that resulted in a settlement after 18 hours of mediation.

- Successfully defended an employer from a workers' compensation discrimination claim tried before the NYS Workers' Compensation Board.
- Settled a series of claims for an employer brought by the Occupational Safety and Health Administration before the Occupational Safety and Health Review Commission.
- Handled numerous I-9 audits for employers.
- Obtained a no probable cause determination for a former employee in an age discrimination case before the NYS Division of Human Rights.
- Former employee filed sexual harassment claims (hostile work environment and quid pro quo) with the United States Equal Employment Opportunity Commission. After investigation, the United States Equal Employment Opportunity Commission concluded that there was insufficient evidence to establish a violation of Title VII of the Civil Rights Act.
- Represented a barbeque restaurant in a lawsuit filed by a former employee alleging sex and sexual orientation discrimination, sexual harassment, and retaliation. After the conclusion of discovery, the restaurant moved for summary judgment, and the court granted summary judgment in full.
- Represented an autism services provider being charged for allegedly violating Section 8(a)(1) of the National Labor Relations Act (NLRA) by terminating an employee in retaliation of the employee's protected concerted activities. After investigation, the National Labor Relations Board (NLRB) found no evidence of concerted activities nor animus toward individual concerns the complainant expressed about staffing and other workplace issues. The NLRB found that our client discharged the complainant because she refused to sign a performance improvement plan.
- Represented a barbecue restaurant when a verified complaint was filed with the New York State Division of Human Rights (NYSDHR) and the United States Equal Employment Opportunity Commission (EEOC) claiming unlawful discriminatory practices relating to employment because of gender identity expression, race and color, sex, sexual orientation, and domestic violence victim status. After investigation, the NYSDHR concluded there was no probable cause that the discrimination occurred and dismissed the matter. The EEOC adopted the findings of the NYSDHR and dismissed the federal claims. The complainant was not employed by the barbecue restaurant but rather was employed by a food ordering and delivery company and was arguing that he should be considered an employee of the barbecue restaurant.
- Represented a defendant, a barbecue restaurant chain, in an action commenced in the Superior Court of New Jersey, Essex County, in which a former male employee alleged discrimination based on sex, sexual orientation, gender

expression, and intentional infliction of emotional distress. After the conclusion of discovery, the defendant moved for summary judgment. The Superior Court of New Jersey granted the defendant's motion and dismissed all claims.

- Represented a client in disability and family status discrimination claims filed by a former employee before the New York State Division of Human Rights, who found no probable cause that the client engaged in or is engaging in discrimination.
- Represented a provider in a disability discrimination claim brought by a former patient before the New York State Division of Human Rights. The complainant claimed the provider refused to accommodate her medical condition by making her wear a face mask due to COVID-19. After the investigation, the New York State Division of Human Rights found no probable cause to believe the patient's rights were violated.
- Successfully reduced the number of serious OSHA citations received by an urgent care provider for violating the Healthcare Emergency Temporary Standard from 19 to three, and reduced the client's fine by 60 percent.

Prior Experience

- Hiscock & Barclay, LLP, Partner
- Hancock Estabrook, LLP, Partner
- AWI Environmental Services, Inc., General Counsel and Human Resources Director
- Paravati, Karl, Green & Eisenhut, LLP, Associate

Selected Community Activities

- Upstate University Hospital, Patient and Family Advisory Council, Member
- Rochester Institute of Technology Alumni Network, Board of Directors, Member
- Rochester Institute of Technology, Capital Campaign Committee, Member
- Syracuse University College of Law, Associates Council Advisory Board, Former Vice Chair
- The Hemophilia Connection, Former Board of Directors Member
- Meals on Wheels of Syracuse, Former Board of Directors Member

Selected Honors

- *The Best Lawyers in America*®: Employment Law – Management, 2011–2027; Labor Law – Management, 2011–2027; Litigation – Labor and Employment, 2011–2027
- Selected to *Super Lawyers* Upstate New York: Employment Litigation: Defense, 2019–2020; Employment & Labor, 2007–2025
- Northern District of New York Federal Court Bar Association, Hon. George H. Lowe Award, 2024
- *The Best Lawyers in America*®: Syracuse "Lawyer of the Year": Employment Law – Management, 2016; Labor Law – Management, 2014 and 2016; Litigation – Labor and Employment, 2012
- Northern District of New York Federal Court Bar Association, Pro Bono Award, 2019

Selected Speaking Engagements

- American Payroll Association New York State Conference Keynote Address, “New York State’s Sexual Harassment Prevention Law”
- Cornell Cooperative Extension, Agricultural Workforce Development Program, “Wage & Hour Laws Impacting Agricultural Employers”
- Society of Human Resource Management, “New York State Paid Family Leave Act”
- Gilroy, Kernan & Gilroy, Inc., “Salary History Discrimination”
- Chemung County Chamber of Commerce, “Sexual Harassment Training - Education, Prevention, and Investigation: The Trifecta of a Defense”

Selected Media

- *Central New York Business Journal*, "New Labor Laws in Effect and on the Horizon"
- *Central New York Business Journal*, "New York's Clean Slate Act Takes Effect This Fall"
- *Central New York Business Journal*, "New Year Brings New Pay-Transparency Law, Minimum Wage"
- *Central New York Business Journal*, “Businesses Need to Be Aware of Whistleblower-Law Changes”
- *Buffalo Law Journal*, “New York Enacts Sweeping Sexual Harassment Legislation”
- New York State Bar Association Labor & Employment Newsletter, “The NYS Flag Discrimination Statute”
- *USLAW Magazine*, “When an Employee Transitions: What Every Employer Should Know”

Selected Alerts & Blog Posts

- New York State Enacts New Personnel Records Access Law
- A Guide to the DOL's Independent Contractor 2024 Final Rule
- Pre-Employment Marijuana Testing Ban Goes Into Effect in New York City
- Pre-Employment Drug Testing and Marijuana
- Adult-Use Cannabis and the Workplace: Time to Revisit Employment and Drug-Testing Policies

Selected Podcasts

- *Barclay Damon Live: Labor and Employment Podcast*—"Don't Get Caught Off Guard: NY's New Personnel Records Law"
- *Barclay Damon Live: Labor and Employment*—""Hospitality Wage Laws: The Costly Mistakes Employers Can't Afford to Make, Part 2"
- *Barclay Damon Live: Labor and Employment*—"Hospitality Wage Laws: The Costly Mistakes Employers Can't Afford to Make"
- *Barclay Damon Live: Labor and Employment*—"You Received an EEOC Charge—Now What?"
- *Barclay Damon Live: Labor & Employment Podcast*—"You've Received a NYS Division of Human Rights Complaint—Now What?, Part 2"