Labor & Employment

Barclay Damon provides comprehensive, practical, and effective advice on a full spectrum of labor and employment matters. Our clients are public- and private-sector employers located throughout the United States, including multi-national companies, emerging companies, small businesses, governmental and quasi-governmental agencies, and not-for-profits. These organizations span industries that include, among numerous others, energy, health care, and higher education. *Chambers & Partners* ranks Barclay Damon's Labor & Employment Practice Area among top labor and employment practices, and quotes a client who said, "Barclay Damon is my recommendation for any and all matters, from the little items to the major and extremely complex ones" and "The attorneys are very accessible and understand our business needs."

Our team has extensive experience in all areas of law required by employers, including the following:

Employment Law

- Discrimination, sexual harassment, and civil rights claims: prevention and defense
- Employee discipline issues
- Employee policies and handbooks
- Executive contracts and employment agreements, including confidentiality, noncompetition, nonsolicitation, and invention-assignment
- Plant closings and the Worker Adjustment And Retraining Notification Act and other issues related to layoffs and restructuring
- Privacy and cybersecurity issues related to employees, employee data, and employment
- Regulations for federal contractors, including from the Office of Federal Contract Compliance Programs
- Severance agreements and issues related to discharge
- Wage and hour laws, including worker classification, minimum wage, equal pay, and overtime pay issues
- Whistle-blower, retaliation charges, and internal investigations
- Workplace health and safety
- All state and federal laws and regulations affecting employers

Labor Law

Barclay Damon's extensive knowledge of labor unions throughout the United States and our deep understanding of the specific issues within our wide-ranging client base are invaluable to clients seeking to create positive and productive labor management relations. As a result, we skillfully represent our clients before the National Labor Relations Board, Public Employment Relations Board (PERB), and other labor relations agencies. We conduct investigations and provide litigation support for grievances and unfair labor and improper practice charges. We provide representation in discipline and discharge cases and in arbitration proceedings, and we support our clients during strikes. Our representation includes advising clients on elections and jurisdictional disputes. We frequently serve as chief negotiators and strategists during collective bargaining and assist employers in analyzing and interpreting collective bargaining agreements.

Labor and Employment Litigation Defense

Avoiding costly litigation is always our goal. We do this by providing practical advice and counseling on a day-to-day basis with our clients as well as delivering customized training programs for management and supervisors—including human resources and legal staff—to assess and prevent potential risks and legal exposure before disputes arise. We also help employers craft policies and practices to best avoid conflict.

When necessary, we are well prepared to provide a powerful defense to employers against employment-related claims of any nature. We have decades of experience representing employers before federal, state, and local agencies and in state and federal trial and appellate courts as well as in alternative dispute resolution forums such as mediation and arbitration.

We aggressively defend against claims brought under state and federal laws and regulations, including the Age Discrimination in Employment Act, Americans With Disabilities Act, Equal Pay Act, Title VII of the Civil Rights Act, and state human rights laws. We also defend employers in class-action suits.

Other Critical Areas for Employers

OSHA compliance. Barclay Damon attorneys advise employers on compliance with the complex federal Occupational Safety & Health Act (OSHA) and state health and safety laws. We develop written safety and health manuals and training programs, assist employers in government audits, and contest citations and penalties.

Trade secret protection. Through litigation, counseling, and transactional work, our labor and employment and intellectual property attorneys work together to protect some of our clients' most valuable assets—the ideas, customer information, data, and processes essential to operating their businesses. Our litigators regularly seek injunctions in US federal and state courts to prevent the disclosure and misuse of trade secrets and other confidential information. We also represent parties whose trade secrets have been misappropriated or who are accused of misappropriating the trade secrets of others. We routinely protect financial, technical, scientific, economic, and operational information in electronic and other formats for clients in a wide number of industries under the federal Defend Trade Secrets Act, related state laws, and common law.

Representative Experience

- Obtained summary judgment in disability discrimination and retaliation claims brought under the Americans With Disabilities Act, Rehabilitation Act, and NYS Human Rights Law. The plaintiff was a former union power plant employee.
- Obtained a favorable settlement for a not-for-profit housing agency sued by a former employee for disability discrimination and retaliation before substantial litigation costs were incurred.
- Obtained a favorable settlement for a temporary staffing agency when the company to whom the employee was supplied sought indemnification for payments and attorneys' fees in a personal injury action.
- Successfully defended a temporary staffing agency against large-value claims by a former employee based on personal injuries.
- Obtained a dismissal of whistleblower and wrongful termination claims on behalf of a national amenities service provider in Ohio state court.
- Conducted a sexual harassment investigation involving claims against a CEO.
- Obtained an order vacating an arbitration award that awarded union, health, and welfare funds totaling over $1.1 million.
- Defended a retaliation charge for engaging in protected activity under the Taylor Law.
- Obtained a dismissal of a same-sex sexual harassment claim after trial and the motion for judgment, notwithstanding the verdict.
- Obtained a successful dismissal of a sexual discrimination charge brought by an employee before the NYS Division of Human Rights.
- Successfully obtained a dismissal of a racial discrimination and sexual harassment claim by a terminated employee of a medical transport company before the NYS Division of Human Rights
- Represented an equipment contractor in a claim from a trustee for benefit contributions to union benefits fund, resolving the claim for substantially less than the claimed damages.

- Represented a staffing company in a disability discrimination and retaliation case in the US District Court for the Western District of Pennsylvania.
- Obtained a dismissal of a disability discrimination case in the US Court for the Northern District of New York for a group of individuals.
- Represented a fly fishing and braided line products manufacturer against a former executive who violated a restrictive covenant and disclosed trade secrets. Obtained a temporary restraining order and preliminary injunction enjoining the former executive from competing or soliciting clients and from disclosing trade secrets.
- Obtained a no probable cause determination for a behavioral health provider in a race and criminal conviction discrimination and retaliation case.
- Obtained a no probable cause determination for an addiction treatment center in a gender discrimination and retaliation case.
- Represented an industrial automation distributor against claims from four former managers for unpaid bonus compensation under the NYS Labor Law, breach of contract, and unjust enrichment. Settled with the plaintiffs on the claims, including protections for the company in connection with the sale of its assets to an unrelated third party.
- Represented a hardware store against a seller who violated restrictive covenants for breach of contract, breach of the duty of loyalty, unfair competition, misappropriation of trade secrets, and other related claims. Settled with the defendants, agreeing to honor the restrictive covenant obligations and pay $35,000.
- Obtained partial summary judgment worth $750,000 against two former cardiologists who violated their noncompetition agreements and successfully appealed to the NYS Appellate Division, Fourth Department for attorney's fees worth an additional $200,000.
- Obtained a no probable cause determination for a fast-food restaurant in a race discrimination case before the NYS Division of Human Rights.
- Obtained a no probable cause determination for an addiction treatment center in a gender, conviction record, and parolee status discrimination case before the NYS Division of Human Rights.
- Represented a third-party staffing agency in third-party indemnification action related to an underlying race and national origin discrimination and retaliation case in the US District Court for the Western District of New York. Obtained judgment on the pleadings in the US Court of Appeals for the Second Circuit.
- Drafted and negotiated an employment agreement for a not-for-profit CEO.
- Represented a clothing consignment store before the Unemployment Insurance Appeal Board in a successful appeal of the decision of an administrative law judge.
- Obtained a favorable settlement for a rubber flooring manufacturer in connection with a US Department of Labor (USDOL) investigation concerning claims by current and former employees for unpaid wages.
- Conducted a sexual harassment investigation for a human services provider that involved claims against a co-worker, supervisor, and the human resources department.
- Obtained a no probable cause determination for a behavioral health provider in a disability discrimination case before the NYS Division of Human Rights.
- Obtained a no probable cause determination for a public university in an alleged race and national origin discrimination case before the NYS Division of Human Rights.
- Obtained summary judgment for a childcare provider in an age discrimination and retaliation case, and subsequently prevailed on appeal.
- Represented a client in connection with an Audit Closing Agreement Program negotiation, negotiating a retroactive amendment spanning 28 years to conform the plan document to the operational practice, avoiding restorative contributions potentially in the seven-figure range.

- Represented a behavioral health provider in a sexual harassment and retaliation case, obtaining a no probable cause determination.
- Obtained a no probable cause determination for an employer in a disability and predisposing genetic characteristic discrimination and retaliation case.
- Represented a company in an appeal of unemployment insurance benefits with the NYS Department of Labor (DOL) claiming that independent physicians and all others in similar roles were employees.
- Successfully represented a charter school in a case filed by a former employee alleging the school had violated various provisions of the NY Labor Law, including requiring kickbacks of wages. Obtained a dismissal of the claims for failure to state a claim for which relief could be granted.
- Successfully represented a public charter school against claims of racial and gender discrimination, including preparing a detailed position letter to the Equal Employment Opportunity Commission (EEOC) and the NYS Division of Human Rights, participating in an investigatory conference, and submitting a summary letter. The court found no probable cause and dismissed the claims.
- Served as counsel to a NYS Office of Alcoholism and Substance Abuse Services (OASAS) chemical-dependency treatment program in a case of first impression, creating precedent from a NYS appellate court that chemical-dependency-treatment clients who participate in licensed chemical-dependency residential treatment programs are not entitled to an eviction proceeding or substantive due process prior to discharge.
- Successfully obtained a dismissal of a premises liability action against an insurance company after the trial in which the plaintiff sought over $1 million in damages.
- Obtained summary judgment in a toxic-exposure and NYS Labor Law case with significant injuries claimed.
- Represented an orthopedic surgery practice in Upstate New York in connection with a verified complaint filed by a former employee with the New York State Division of Human Rights (NYSDHR) and the US Equal Employment Opportunity Commission (EEOC) alleging unlawful employment discrimination, retaliation, and disability-related claims. The NYSDHR dismissed the claim.
- A former employee of a Central New York hospital system filed a charge of discrimination with the United States Equal Employment Opportunity Commission claiming sex and disability discrimination. After the investigation, the EEOC dismissed the charge of discrimination.
- Represented a Central New York not-for-profit health care center in an administrative discrimination claim filed with the New York State Division of Human Rights (NYSDHR) and United States Equal Employment Opportunity Commission (EEOC) by a former employee claiming disability discrimination. The NYSDHR denied the substantive allegations and found no probable cause of discrimination. The company requested the EEOC adopt the findings of the NYSDHR and is awaiting dismissal of the federal claim.
- Successfully challenged four "serious" citations of alleged violations of OSHA's hearing conservation program standards, resulting in the withdrawal of one citation, the reduction of three citations to "other than serious," and a 50-percent fine reduction, on behalf of a hardwood flooring manufacturer.
- Represented a health care center in a claim of disability discrimination filed by a former employee with the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission. The claim was dismissed, finding no discrimination had occurred.
- 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.

- Represented the defendant in a defamation case brought against them for posting a "lookbook" to their website that included the plaintiff's name and photo. After discovery, including several depositions and various discovery motions, and denial of the plaintiff's motion to amend complaint and reconsideration motion, the court granted the defendant's summary judgment motion dismissing the lawsuit.
- Represented a large private university in connection with age discrimination and related state-law claims brought by a former professor. The district court dismissed the claims, the First Circuit affirmed, and the First Circuit denied the plaintiff's petition for rehearing and petition for en banc review. In its affirmance, the First Circuit agreed that the plaintiff's wrongful termination claims were time-barred, also finding that the plaintiff failed to demonstrate error regarding the district court's conclusion that any failure-to-hire claim had not been properly exhausted and failed to state a plausible claim of retaliation.
- 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.
- Handled a union election and union deauthorization election.
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- Conducted an internal investigation of an agency's policies and procedures in handling discrimination allegations and diversity, equity, and inclusion issues at the behest of the CEO. An investigation and review were conducted and a summary was given to the CEO recommending new policies and procedures to improve diversity, equity, and inclusion efforts.
- Handled an internal sexual harassment and hostile work environment investigation for a not-for-profit agency and provided training on sexual harassment prevention.
- Represented a private university in connection with age discrimination and related state law claims brought by a former professor. The district court dismissed the claims, and the First Circuit affirmed. In its summary affirmance, the First Circuit agreed that the plaintiff's wrongful termination claims were time barred. The First Circuit also found that the plaintiff failed to demonstrate error as to the district court's conclusion that any failure-to-hire claim had not been properly exhausted and failed to state a plausible claim of retaliation. The court further affirmed dismissal of the state law claims on the grounds that they should not be discretionarily entertained and for the appellant's failure to establish the requisite amount in controversy.
- Represented the 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 mechanical contractor in a whistleblower complaint filed against them with the Nevada Occupational Safety and Health Administration. The matter was successfully settled with a minimal monetary payment and no admission of liability.
- 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 barbeque 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 barbeque 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.
- Obtained a no probable cause determination for a former employee in an age discrimination case before the NYS Division of Human Rights.
- Former employee asserted claims of discrimination based on race and color, family status, sex, and disability. Former employee also claims retaliation for having opposed illegal discrimination in the workplace. After investigation by the New York State Division of Human Rights (including submission of Position Statement, documents, and interviews), the New York State Division of Human Rights found No Probable Cause to believe that discrimination or retaliation occurred.
- Successfully defended a major hotel against an employment discrimination claim.
- Successfully defended hospitality client against employment discrimination claim.
- 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 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.
- 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.
- Litigated breach of contract and breach of implied covenant of good faith and fair dealing resulting in case being dismissed.
- Litigated labor and employment claims resulting in case being dismissed.
- Litigated a restrictive covenant case that resulted in the case being dismissed.
- Litigated fair labor dispute with the Office of the Attorney General Fair Labor Division and settled case.
- Litigated multiple PTO and wage claims and settled the case.
- Litigated EEOC practice group claims before the case was ultimately dismissed.
- Litigated labor and employment claims on behalf of an office supply company.
- Litigated non-compete and restrictive covenant claims and settled the case.
- Litigated discrimination and wrongful termination claims and settled case.
- Litigated discrimination claims resulting in case being dismissed.
- Litigated discrimination claims resulting in the case being dismissed.
- Litigated EEOC claims of sexual harassment resulting in the case being withdrawn.
- Litigated Equal Employment Opportunity Commission claims of discrimination.
- Litigated EEOC claims of discrimination resulting in the case being withdrawn.
- Litigated EEOC claims of discrimination resulting in the case being dismissed.
- Litigated Equal Employment Opportunity Commission claims of discrimination, which resulted in the case being dismissed.

- Litigated Equal Employment Opportunity Commission claims of discrimination, which resulted in the case being dismissed.
- Represented a national, multifamily hospital company in an Equal Employment Opportunity Commission discrimination action.
- Litigated workers' compensation claims and settled case.
- Litigated tortious interference claims and settled the case.
- Litigated wrongful termination and whistleblower claims resulting in the case being dismissed.
- Litigated noncompete claims and won court injunction in favor of the client.
- Litigated wage and hour claims and settled after mediation.