



DONALD D. BERNER

PARTNER

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PROFILE

Mr. Berner advises employers on various human resources issues and a wide variety of matters involving the employment relationship. These issues involve employment discrimination claims under Title VII and other discrimination statutes, claims under the Family and Medical Leave Act (FMLA), wage and hour matters under the FLSA and various state laws, labor relations issues under the various federal and state laws (NLRA, LMRA, and EFCA), health and safety matters involving OSHA and other state laws, reduction in force issues (WARN and OWBPA), and on matters involving a wide range of immigration and nationality issues. Mr. Berner's immigration practice is concentrated in the areas of business immigration. Mr. Berner works with large and small businesses, universities, health care institutions, physicians, engineers, scientists, artists and entertainers, and other professionals with respect to non-immigrant and immigrant visa matters. He also has expertise in I-9 audits, family immigration, and naturalization matters. Mr. Berner has represented employers in employment-related disputes in federal and state court, and at various administrative agencies including OSHA, DOL, USCIS, DOS, NLRB, EEOC, and a wide range of state and local agencies. Mr. Berner enjoys Martindale-Hubbell Law Directory's high "BV" rating for lawyers and is listed in *The Best Lawyers in America*® and *Chambers USA* as a leading employment attorney in the United States.

Education

- Washburn University (J.D., 1997)
cum laude, *Washburn Law Journal*
- Park College (B.S., 1992)

Admissions

- Kansas (1997)

PRACTICE AREAS

- Employment & Labor

FOULSTON

ATTORNEYS AT LAW

- Immigration
- OSHA
- Governmental Liability
- Healthcare

INDUSTRIES

- Healthcare

COMMUNITY INVOLVEMENT

- Junior Achievement, Board of Directors
- Advance Kansas, Class of 2020

RELEVANT EXPERIENCE

- Mr. Berner has participated in adversarial hearings in a wide range of forums on behalf of employer clients. These hearings include an OSHA trial to an OSHRC administrative law judge, several NLRB hearings, and several labor arbitrations involving issues ranging from employment terminations to contract interpretation disputes. Mr. Berner has also handled a number of state and federal court litigation matters in which he has successfully obtained dismissal of the matters prior to trial. He has also successfully mediated a number of employment cases and defended employers in workplace matters including DOL audits, EEOC investigations, OSHA inspections, and NLRB investigations. In Mr. Berner's immigration practice he has obtained citizenship, permanent residence (green cards) and temporary work authorizations on behalf of numerous foreign individuals and involved applications with the DOL, USCIS, State Department (DOS), and various state agencies.
- In addition, Mr. Berner has assisted numerous employers in the area of union representation of their workforce. He has served as the primary spokesperson in a number of contract negotiations and has assisted numerous employers in their efforts to remain union free.

PROFESSIONAL MEMBERSHIPS, AFFILIATIONS, AND HONORS

- Selected by peers for inclusion in *The Best Lawyers in America*® in the areas of Employment Law – Management, Labor Law – Management, and Litigation – Labor & Employment, 2010-2014, 2016-2020
- Identified by Chambers USA as a leading lawyer in the United States in the area of Labor & Employment, 2012-2013, 2015-2018
- American Bar Association
- Kansas Bar Association
- Wichita Bar Association
- American Immigration Lawyers Association

PRESENTATIONS

2020

- COVID-19 Guidance for Hospital Employers - FFCRA, OSHA, and Confidentiality (Kansas Hospital Association)
- Implementing the Families First Coronavirus Response Act (FFCRA) (Foulston Siefkin LLP, Coronavirus Webinar)
- An Employer's Guide to Coronavirus (Foulston Siefkin LLP, Coronavirus Webinar)
- The NLRA for Non-Union Employers (Foulston Siefkin LLP, HR Training Series)

2019

- End-of-Year Update (Foulston Siefkin LLP, HR Training Series)
- The NLRA for Non-Union Employers (Foulston Siefkin LLP, HR Training Series)
- What Fresh Hell Is This? The Latest From the Legislature, Agencies, and Courts (Foulston Siefkin LLP, Kansas Employment Law Institute)
- HR's Guide to the (Hiring) Galaxy - Tips and Tricks to Avoid Common Hiring Pitfalls (Foulston Siefkin LLP, Kansas Employment Law Institute)

2018

- End-of-Year Update: We Made the List But It's Up to You to Check It Twice (Foulston Siefkin LLP, HR Training Series)
- What to Do When OSHA Shows Up (Foulston Siefkin LLP, HR Training Series)
- Just the Facts: Difficult Conversations, Discipline, and Performance Management (Foulston Siefkin LLP, HR Training Series)
- In the Beginning: What Every HR "Newbie" Needs to Know about Employment Law (Foulston Siefkin LLP, Employment Law Seminar)
- Employment Law Round-up - The Latest from the Legislature, Agencies, and Courts (Foulston Siefkin LLP, Employment Law Seminar)

2015

- In the Beginning: What Every HR "Newbie" Needs to Know about Employment Law (Foulston Siefkin LLP, Employment Law Seminar)

2014

- How to Have Difficult Conversations with Employees (Foulston Siefkin LLP, Employment Law Seminar)

2013

- Employment Law Update: The Latest Word on Worker Documentation (Foulston Siefkin, Employment Law Seminar)

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ATTORNEYS AT LAW

2012

- Authorized or Not? Current Trends Related to Work Authorization and Immigration Law (Foulston Siefkin Employment Law Seminar)
- Workplace Policies Workshop (Foulston Siefkin)
- Avoiding Harassment Claims (Foulston Siefkin HR Box Lunch Fall Series)
- Key Considerations in the Hiring Process (Foulston Siefkin HR Box Lunch Fall Series)

2011

- OSHA Compliance (Foulston Siefkin OSHA Workshop, Overland Park)

2010

- Workplace Staffing Issues: Hiring, Evaluating, Disciplining, and Discharging (HR Basics) (Foulston Siefkin, Employment Law Seminar - Wichita)
- OSHA Compliance (Foulston Siefkin OSHA Workshop, Wichita)
- Immigration, Deemed Exports, and Other Employment-Related Issues that Sponsors and Principal Investigators Need to Understand (Foulston Siefkin Regional Bioscience Law Conference)

2009

- The Brave New World of Employment and Labor Law: Immigration Update (Foulston Siefkin Employment Law Seminar)
- The Brave New World of Employment and Labor Law: The Employee Free Choice Act (Foulston Siefkin Employment Law Seminar)
- The Employee Free Choice Act "EFCA" (Kansas Manufacturers Network)

2008

- HR 101: Intro to Employment Law (Foulston Siefkin Employment Law Seminar)
- The Latest in Immigration Law (Foulston Siefkin Employment Law Seminar)
- Immigration-Untapped Source of Employees? (Health Law Institute)
- Union Avoidance: Maintaining a Union Free Workplace (Foulston Siefkin HR Box Lunch Workshop Series)

PUBLICATIONS

2015

- DOL spouse rule on hold in four states
-Lexology
- NLRB election rule challenged
-Lexology
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NLRB quickie election rule faces Congressional attack

-Lexology

- Like a Girl Superbowl commercial
-Lexology
- Court Invalidates DOL change to companionship exemption
-Lexology
- New OSHA reporting rule goes into effect
-Lexology
- Top ten most frequently cited OSHA standards for FY2014
-Lexology
- DOL continues to add states to employee misclassification initiative
-Lexology
- Termination goes south
-Lexology

2014

- Employment & Labor in Missouri - Lexology Q & A
-Lexology
- A freaky non-compete non-sequitur
-Lexology
- The lessons of the recent Ebola outbreak
-Lexology
- Corporate media policy runs afoul of the National Labor Relations Act
-Lexology
- Court of Appeals weighs in on H-2B wage rule
-Lexology
- NLRB opens company email up for employee use in organizing campaigns
-Lexology
- EEOC concern about targeted job advertisements
-Lexology
- EEOC catches grief over wellness plan litigation
-Lexology
- Facebook like Protected concerted activity
-Lexology
- Happy Labor Day!!!
-Lexology
- DOL proposes rule to raise minimum wage for federal contract workers
-Lexology
- Foreign student employment
-Lexology

2012

- The next wave of social media disputes: Who owns the account?
-Kansas Employment Law Letter
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Winning the social media war
-Kansas Employment Law Letter

2009

- When Free Isn't Free: The Employee Free Choice Act (EFCA)
-Kansas Employment Law Letter

2006

- Beginning the teen years: a review of the FMLA basics -- part 1
-Kansas Employment Law Letter

2005

- 'Make up' grooming standards that avoid liability
-Kansas Employment Law Letter
- OSHA recordkeeping vs. HIPAA privacy: workplace accident in the making
-Kansas Employment Law Letter

2003

- Foreign Students: the journey from student to employee and stops along the way
-Kansas Employment Law Letter
- Means of egress: What exactly does that mean?
-Kansas Employment Law Letter

2001

- Immigration law and the workplace: recruiting foreign workers
-Kansas Employment Law Letter

2000

- How final is final when arbitrator issues ruling interpreting your CBA?
-Kansas Employment Law Letter

1999

- Stretching the ADA to make something out of nothing
-Kansas Employment Law Letter, Vol. 6, No. 1
- Update on current status of proposed ergonomics standard
-Kansas Employment Law Letter, Vol. 6, No. 6.

1998

- An ounce of prevention: OSHA offers guidance on emergency response plans
-Kansas Employment Law Letter, Vol. 5, No. 6
- Is your company complying with the Equal Pay Act?
-Kansas Employment Law Letter, Vol. 5, No 7

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ATTORNEYS AT LAW

- Recent news and notes from OSHA`
-Kansas Employment Law Letter, Vol. 5, No. 2
- Should bonuses be included in determining overtime?
-Kansas Employment Law Letter, Vol. 5, No. 6
- Supreme Court to decide quid pro quo requirements
-Kansas Employment Law Letter, Vol. 5, No. 2
- Unionized employers caught between rock and hard place are set free
-Kansas Employment Law Letter, Vol. 4, No. 12

ISSUE ALERTS

2008

- E-Verify and the New Federal Contractor Requirements