



# Michael C. Schmidt

## Vice Chair, Labor & Employment Department

### New York

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Mike is the vice chair of the firm's Labor & Employment Department, the office managing partner of the New York office, and a member of the firm's management committee. For more than 25 years, Mike has assisted businesses and their management teams throughout the United States accomplish their goals through litigation, negotiation, and day-to-day counseling.

Mike is a trial lawyer who represents employers in federal and state courts, in arbitration, and before government agencies on issues including discrimination, harassment, and retaliation; wage and hour, including class and collective actions; FMLA, ADA, and other federal, state, and local leave obligations; breach of contract; whistleblowing, including SOX and other laws; restrictive covenants, noncompetes, and nonsolicits; social media use; WARN; Families First Coronavirus Response Act (FFCRA) and other COVID-19 legislation; and other employment law matters.

Mike provides in-person and web-based employment law training to corporate executives, managers/supervisors, HR professionals, and other employees on employment law requirements and trends, including cultural sensitivity in the workplace; harassment, discrimination, and retaliation; the use and pitfalls of social media; accommodation and leave-related issues; manager ABCs; and other customized issues unique to the organization.

He is also a legal and business counselor providing day-to-day advice to employers on all employment law issues from hiring to firing. Mike drafts and reviews employment and severance agreements; reduction-in-force plans; employee handbooks and individual policies; non-compete and non-solicit agreements; and other documents used in conjunction with the employer-employee relationship.

Mike is part of the firm's 2020 Coronavirus Taskforce and conducts COVID-19-specific webinars and podcasts and counsels employers on return-to-work, WARN, COVID-19 legislation, and other pandemic issues. He also created an employer COVID-19 toolkit of templates and policies and other checklists and documents.

He is the founder and host of the podcast Employment Law Now since February 2017, bringing listeners the latest trends and developments in employment law and which is available on iTunes and Spotify. The podcast won the 2020 JD Supra Readers Choice Award for Top Podcast and Thought Leadership on employer liability issues. Mike is regularly invited to speak at national conferences and webinars, including the ABA, AELC, NELI, and industry/trade associations, on television and radio/internet programs, and regularly quoted in national and local journals and newspapers on employment law developments and trends.

Beyond his regular client practice, Mike serves as the chairman of the board of directors of After-School All-Stars of New York, the New York chapter of a national charitable organization founded by Arnold Schwarzenegger in the mid-1990s to provide after-school and summer programs for inner-city youth. He also spends significant time providing pro bono counsel to various organizations and individuals who are less able to afford representation in times of need.

Mike earned his undergraduate degree, with honors, from Brandeis University in 1990. He earned his

#### Practice Areas

- Labor & Employment
- Employment Litigation
- Trade Secrets, Restrictive Covenants, and Computer Abuse
- China Practice
- Artificial Intelligence

#### Industry Sectors

- Insurance
- Real Estate & Construction
- Hospitality
- Retail

#### Education

- Hofstra University School of Law, J.D., 1993
- Brandeis University, B.A., 1990

#### Bar Admissions

- New York

#### Court Admissions

- New York Court of Appeals
- New York Supreme Court
- U.S. District Court -- Eastern District of New York
- U.S. District Court -- Northern District of New York
- U.S. District Court -- Southern District of New York

#### Affiliations

- American Bar Association
- New York State Bar Association
- American Employment Law Council, Annual Conference Vice Chair

#### Awards & Honors

- Benchmark Labor & Employment Star for the Northeast
- New York Metro Super Lawyers, 2020 - Present
- The National Law Journal Employment Law Trailblazer, 2021
- Fellow, College of Labor and Employment Lawyers
- Lawdragon Top Leading U.S. Corporate Employment Lawyers, 2021-2025
- Legal Professional Excellence Awards - Innovation, 2022

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law degree, with distinction, from Hofstra University School of Law in 1993, where he was a notes and comments editor of the Hofstra Law Review.

## Experience

Won summary judgment for a banking industry client in a case in which the plaintiff, whose employment had been terminated because he was believed to have committed forgery, alleged that he was fired due to his gender, disability, and request for paternity leave. This result was affirmed by the U.S. Court of Appeals for the Second Circuit.

Represented the shareholders of Aries Global Logistics, Inc., an international air and ocean freight forwarder, in its \$105 million sale to NTG Air & Ocean USA, Inc., a subsidiary of NTG Nordic Transport Group A/S, a publicly traded Danish transportation company. This transaction drew on the experience of the firm's corporate; tax; real estate; labor and employment; employee benefits and executive compensation; antitrust; technology, privacy, and data security; transportation and trade; and intellectual property attorneys.

Represented Hewlett-Packard in a high-profile case against Kodak in which we won several hard-fought e-discovery battles and defeated a preliminary injunction petition.

Secured dismissal of a complaint filed with the Occupational Safety and Health Administration by a former executive of our client, a proprietary software development company, alleging that his employment was terminated in violation of the Sarbanes-Oxley Act's whistleblower provisions. The complainant alleged that because our client was a contractor to public companies, the alleged unlawful scheme about which he blew the whistle would result in shareholder and public fraud. This dismissal thus represents a significant rejection of a former employee's attempt to expand whistleblower jurisdiction under the Sarbanes-Oxley Act.

Won summary judgment in an age discrimination case, filed in New York state court, in which the plaintiff's claim rested on the allegations that he was replaced by a younger employee and that various other inconsistencies with the alleged termination decision reflected a pretext. The decision was unanimously affirmed on appeal.

Won summary judgment on behalf of a health insurance and wellness company on claims of discrimination and retaliation in violation of the New York State Human Rights Law which centered on the plaintiff's allegations of racial coding.

Won summary judgment on behalf of the largest health insurer in New York State in an age discrimination case filed by a senior program specialist whose employment was terminated for performance-related reasons less than one year after she was transferred to a new "and younger" supervisor. The plaintiff brought both a discrimination and a retaliation claim, each of which was dismissed when the court granted our motion.

Obtained summary judgment and dismissal of a complaint alleging that our health insurer client unlawfully terminated the plaintiff's employment because of a disability while she was out on disability leave. We showed that the record established that the company terminated Plaintiff's employment due to her failure to follow a required policy for initiating disability leaves, rather than because of her underlying disability. Dismissal of this case at the summary judgment stage is particularly noteworthy because the claim was brought under the New York City anti-discrimination statute, which generally requires a more liberal, broad interpretation that favors aggrieved individuals more than its state and federal statutory counterparts.

Represented a manufacturer in a collective and class wage and hour action, defeating class

certification of state off-the-clock overtime and minimum wage claims and obtaining decertification of conditionally certified federal off-the-clock overtime and minimum wage claims.

Secured both directed and jury verdicts in favor of a financial industry client on claims brought by a former executive who alleged the client failed to pay him certain wages and bonuses. We also prevailed on counterclaims to recover personal expenses the plaintiff had charged to his corporate credit card.

Won summary judgment on behalf of a health insurance and wellness company in a matter involving alleged pay inequity.

Defended a health insurance and wellness company in a matter involving alleged pay inequity. This matter settled on terms favorable to the client.

Represented an affiliate of the Italian global market leader in the production of glass packaging and other related pharmaceutical equipment in a \$34 million Series A Preferred Stock Investment in an Indiana-based company operating in the contract development and manufacturing sector. This transaction drew on the experience of the firm's corporate, labor and employment, and employee benefits and executive compensation attorneys.