

Morgan Lewis

california

labor and employment

leaders



delivering strategic litigation and counseling advice to clients in california and around the world

morgan lewis fast facts

firmwide

Founded 1873. Nearly 1,300 lawyers in 23 offices in the United States, Europe, and Asia

Represents more than half of the Fortune 100 companies, including 15 of the top 20 and 9 of the top 10

labor and employment

Recognized by *The American Lawyer* in the past three "Litigation Department of the Year – Labor and Employment Law" contests: Finalist, 2010 and 2008; Winner, 2006; Finalist, 2004

Ranked in Tier 1 for National Labor & Employment and National ERISA Litigation practices by *Chambers USA* 2009

Ranked #1 "most prestigious" labor and employment practice, *Vault* 2008 Associate Survey

Listed as one of *Workforce Management's* Top Employment Law Firms, 2007

Ranked #1 for Labor and Employment Law in *Corporate Counsel's* Who Represents America's Biggest Companies? 2006

22 labor and employment attorneys elected as Fellows of the College of Labor and Employment Lawyers

california

Labor and Employment and Immigration Practices recognized by *Chambers USA*

Three partners named among California's "Top 75 Women Litigators" by the *Daily Journal*, 2009

Ranked among the top Silicon Valley law firms by the *San Jose/Silicon Valley Business Journal*, 2007

Noted in the *Daily Journal's* "Top Defense Verdicts of 2006"

One of the fastest-growing law firms in California (*California Lawyer*, 2006)

As business opportunities grow in size and complexity, relationships built on trust and respect are more important than ever. Close-working relationships define the Morgan Lewis culture and service philosophy. **We're in this together. Your team and ours.**

california focus

with more than 290 lawyers in our four offices

San Francisco

Palo Alto

Los Angeles

Irvine

areas of practice



litigation

- Leading California and national trial team
- Strategic litigation avoidance, planning, and support
- Class action defense
- California-specific regulatory and compliance issues

statistical analysis

- Employment data audits, analysis, and preparation
- Affirmative action plans
- OFCCP compliance reviews

counseling

- Leave laws / FMLA
- Discrimination
- Retaliation
- Immigration
- Workplace training programs
- Hiring issues
- Dismissal procedures and termination documents
- Claims by former employees
- Drafting and customizing employment manuals
- Fiduciary advice
- EEOC / DFEH investigations
- Wage and hour compliance
- Compensation plans



cases in the spotlight

Using novel theory of law to obtain summary judgment in harassment case

Morgan Lewis defended a casino in a suit brought under the California Fair Employment and Housing Act (FEHA) by an employee claiming hostile environment and quid pro quo sexual harassment, retaliation, and failure to prevent harassment. At deposition, however, the plaintiff admitted that she herself had engaged in lewd behavior at the casino. Morgan Lewis argued that, based on the plaintiff's admissions, her hostile environment claim failed because she could not establish the required "unwelcomeness" element. Although there was no FEHA decision on point, Morgan Lewis convinced the trial court to follow several federal decisions holding that, under Title VII, a plaintiff who engages in the same sorts of behavior of which she complains cannot prevail on a harassment claim.

Defending network television against age discrimination charges

Morgan Lewis is handling four class actions in Los Angeles Superior Court brought against companies in the television industry. Scriptwriters belonging to the Writers Guild of America (WGA) have alleged age discrimination in hiring opportunities in network television. The cases stemmed from one of the nation's largest single lawsuits, filed in October 2000 against nearly every big player in the television industry—including networks, production studios, and talent agencies. The single federal case was dismissed in 2002, and plaintiffs refiled numerous class actions in state court, all of which have been dismissed twice. After discovery was launched, a new legal battle began when plaintiffs asked the WGA to turn over its members' personal information and over 7,000 WGA members objected. The cases are now on appeal, where issues of privacy and potential identity theft have been raised.

First decision on pharmaceutical sales representatives' entitlement to overtime

In *D'Este v. Bayer*, a former pharmaceutical sales representative (PSR) brought a class action alleging that PSRs were improperly denied overtime pay and meal and rest break premiums under state law. Similar lawsuits had been filed against other companies in the industry, asserting federal and state law claims on behalf of PSRs across the country. The judge granted judgment in favor of Bayer on all claims and dismissed the lawsuit, concluding that the plaintiff was properly classified as an outside salesperson and, as such, exempt from overtime pay and meal and rest break premium requirements, making it the first federal court decision resolving on the merits the issue of whether PSRs are entitled to overtime.

Decision in Best Buy discrimination trial delivers strong message

In a strongly worded opinion, a California judge ruled for defendant Best Buy in a race-based wrongful termination suit following a five-day bench trial. In his decision, Santa Clara County Superior Court Judge Kevin Murphy wrote: "Racial discrimination is morally reprehensible and cannot be tolerated in any decent society and certainly not by the courts. Equally unacceptable are false accusations of racial bias motivated for financial gain. In the case at bar, the defendant was falsely accused." *Gonzalez v. Best Buy* was selected as a "Top 10 Defense Verdict of 2006" by the *Daily Journal*.

trial capacity

We have a labor and employment team with the capacity to take cases to trial in California and across the United States.

industries

biotechnology

entertainment

financial services

insurance

pharmaceutical

retail

technology

telecommunications

transportation

your questions. our answers.

Workplace Training

Morgan Lewis Resources (MLR) Workplace Training has several courses available that comply with California's AB 1825 mandatory sexual harassment prevention training law and its regulations. "Risky Business: Preventing Harassment" provides guidance on how to recognize forms of harassment and how to prevent retaliation, while "Risky Business II: Strategies for a Harassment-Free Workplace" builds on the foundation of the first course. We are able to provide training in a live classroom format, or as an online, interactive webcast presented in real time.



2009 is a California AB 1825 compliance mandate year

How can you help my organization manage litigation risks within our California operations?

In many cases, our clients are best served by avoiding litigation in California. We invest in risk management best practices and offer a broad array of litigation avoidance strategies and tools to address your company's specific needs. To start, we review all policies, practices, documentation, management accountability systems, and document retention/destruction practices for compliance with governing laws. We can assist you in rectifying policies or practices that may have the effect of creating an aggrieved class of employees.

What specific strategies help in collaborating successfully with unions during restructurings, deals, or mergers?

As one of the largest economies in the world, California's vigorous business environment produces many mergers, acquisitions, startups, closings, reorganizations, and workforce reductions. These workforce changes trigger the complex laws, regulations, benefit plans, contracts, and agreements – on both the state and federal level – that affect union members. Our team handles the full spectrum of employment, labor, benefits, and related issues confronting businesses, including labor negotiations and union contracts, grievances, arbitrations and NLRB proceedings, and plant closing/mass layoff notices (WARN), as well as employee, union, and media communications.

What key issues must California-based companies identify before designating an employee as exempt or nonexempt?

Avoiding problem areas starts with awareness: What are California "living wage" standards for nonexempt employees? What are the daily requirements for overtime pay? What is the salary basis for exempt employees? When your organization knows and follows state wage payment and benefit laws, meets recordkeeping requirements, and adjusts any classification errors quickly, a culture of compliance is created. Preventive audits, managerial training, and clear policies are tools we suggest to support high standards for compliance and help reduce litigation risk.

What is your labor and employment-related trial capacity in California?

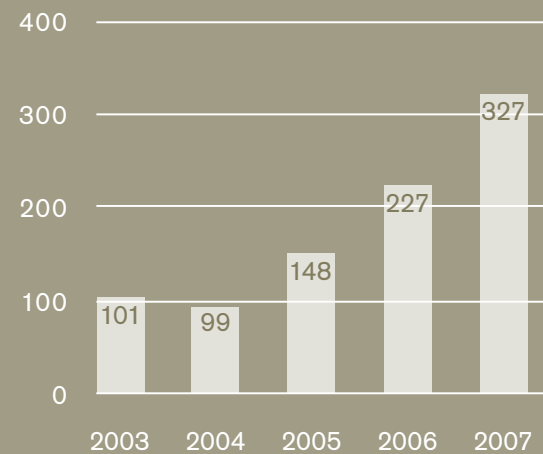
Our team's California trial experience reveals continued success in the most complex areas of the law. Many of our partners are lead counsel for bellwether cases in their practice. Through this work, our team is defining the footprint of significant legal precedents in wage and hour, discrimination, and employee benefits litigation. It is this litigation prowess that helps us defend our clients amidst the constantly changing landscape of legal risk.

What are the major immigration issues to consider as an employer in California?

First, the H-1B cap: current U.S. law imposes a quota of 65,000 H-1B visas per fiscal year (October 1 to September 30); the cap was reached in only days for FY2008. Employers must keep this in mind when recruiting and hiring, and must file as early as allowed—on April 1. Second, I-9 compliance: a recent crackdown on I-9 violations means that even an administrative error can cost up to \$1,100 per form in fines. A June 2008 Executive Order may require federal contractors to confirm employment eligibility of new hires via E-Verify in the future. We help employers achieve compliance through our I-9 eSource, a web-based tool that supports accurate completion of I-9s and connects seamlessly to E-Verify.

Many labor and employment-related class actions originate in California. The number of class actions (labor or employment-related) filed in California federal courts has steadily risen over the last five years.

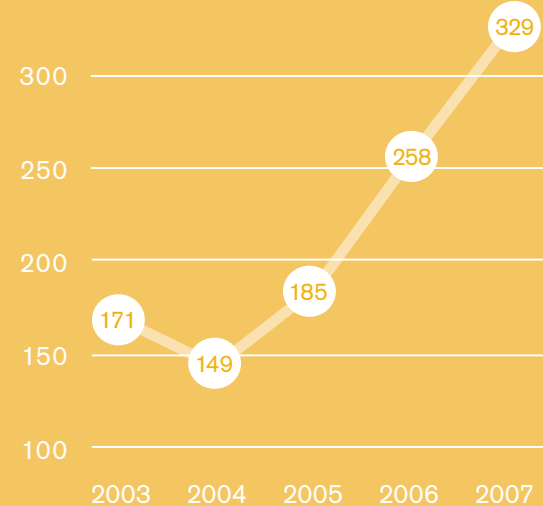
employment class actions filed in california federal courts



Source: LexisNexis CourtLink California—Class Actions Filed—California District Courts 1.1.2003 – 12.31.2007

Cases filed under the Fair Labor Standards Act in California continue to increase. Looking ahead, we expect wage and hour litigation will continue to be a significant source of litigation risk for employers with operations in California.

cases filed under the fair labor standards act in california



Source: LexisNexis CourtLink California – Cases Filed – Fair Labor Standards Act (710) 1.1.2003–12.31.2007



california offices

Irvine

5 Park Plaza
Suite 1750
Irvine, CA 92614

Anne Brafford | 949.399.7117
abrafford@morganlewis.com

Los Angeles

300 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071

Carla Feldman | 213.612.7204
cfeldman@morganlewis.com

Palo Alto

2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto, CA 94306

Daryl Landy | 650.843.7561
dlandy@morganlewis.com

San Francisco

One Market
Spear Street Tower
San Francisco, CA 94105

Rebecca Eisen | 415.442.1328
reisen@morganlewis.com

This communication is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. This material may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes. Some of the photos in this material are dramatizations.