



Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Employment Practice: Morgan Lewis

By **Jesse Greenspan**

Law360, New York (August 04, 2008) -- The national labor and employment model championed by single-discipline firms such as Littler Mendelson PC and Ogletree Deakins Nash Smoak & Stewart PC may succeed at building inventory and revenue, but it does not provide consistency or quality of service, according to Steven Wall, head of the employment group at Morgan Lewis & Bockius LLP.

"When you end up with 75 offices, there is no way you can maintain the consistency and performance of those attorneys because they're not integrated, they're not connected," Wall said.

"It's just being patched together too quickly," he added.

Some large, general practice firms have cut back their labor and employment groups of late because they are not as profitable as other practices. But Morgan Lewis has taken the opposite approach, expanding its labor and employment group to nearly 300 attorneys spread throughout the East Coast, the West Coast, Texas and Chicago.

"We manage to operate it quite profitably," said firm chair Fran Milone. "We're not the least bit concerned about the profitability of the practice.

"When you look at the quality of the clients we have, we represent some of the biggest and best corporations and financial institutions in the country."

Wall said the group was able to succeed by getting "high-level" and "complex" work.

"If you cannot attract the high-level profitable work like the ERISA litigation and the complex employment litigation and the high-level traditional labor law, what you're left with is single-plaintiff employment litigation, single plaintiff wage-and-hour litigation and employment counseling, and your competition is undercutting you by 25% or 50% on rates," Wall said.

He said that Morgan Lewis generally competes with firms like Jones Day and Paul Hastings Janofsky & Walker LLP on the complex employment litigation front, and with firms like Jones Day and Proskauer Rose LLP on the traditional labor law front.

Unlike the single-discipline employment firms, Morgan Lewis is not looking to open any more U.S. offices, according to firm managing partner Tom Sharbaugh. But it is growing its existing offices, particularly the newer ones.

This April, for example, Morgan Lewis hired three attorneys to launch its Houston employment group. A few months earlier, it scooped up a team of six partners and five associates from Baker & McKenzie to boost its labor and employment group in Dallas.

The Dallas and Houston offices are both only a few years old.

“Our geographic plan is to be in each of the major financial centers of the country, from which we can then travel to cover the rest of the country,” Wall said.

Morgan Lewis is also looking to expand its presence internationally, according to Milone. He said that there was a growing amount of work in Europe related to wrongful termination and harassment.

“A lot of the expertise we’ve generated in the U.S. is helpful,” Milone said.

Wall added, however, that “no other country in the world has employment litigation like the U.S. has employment litigation.”

“They don’t have the concept of employment class actions yet,” he said.

Within Morgan Lewis’ labor and employment group are five subgroups: traditional labor, complex employment litigation, wage and hour, ERISA and immigration, according to Wall.

“In each of those five substantive areas we have practice leaders who focus most, if not all, of their practice in that substantive area,” Wall said.

Most other partners, though, do work across more than one subgroup, he added.

Within those subgroups, the firm represents clients in the pharmaceutical, financial services, retail, transportation and entertainment industries, among others.

On the pharmaceutical front, Morgan Lewis has been retained as the defense firm in eight or nine cases involving sales representatives who allege they were denied proper overtime pay. No other firm has been retained in more than two of those cases, Wall said.

Meanwhile, in mid-June, Morgan Lewis won a victory for the financial services industry when the New York Court of Appeals ruled in *Pachter v. Bernard Hodes Group Inc.* that a company does not need written consent to deduct expenses from an employee's commission as long as the parties have an "express or implied agreement."

In addition to a labor and employment practice, Morgan Lewis also has a 70-lawyer employee benefits and executive compensation practice.

Those attorneys counsel clients on providing retirement plans and other benefits to their employees and help with the human resources component of corporate transactions. They also work on employee stock ownership, executive compensation and ERISA matters, among other things.

"A lot of states are focusing on all of these issues," said Bob Lichtenstein, head of the firm's employee benefits group. "Why this practice is booming is because every year is an election year ... and they're all hot-button items."

As far as trends go, Wall predicted that courts would continue seeing an explosion in wage-and-hour litigation.

He added that "with the economy probably heading for several more years of challenge, we will see increased age discrimination as layoffs occur."

"That's what happened in the early 1990s when we had our last downturn," he said.

Finally, Wall said he expects to see an increase in immigration-related cases, noting that the Department of Homeland Security has increased its budget for enforcement.

"Employers are the ones who hired these folks and employers are the ones who have all the obligations for ensuring that they're authorized to work in the United States," Wall said.

Overall, Morgan Lewis has about 1,450 attorneys in 22 offices spread throughout the United States, Europe and Asia.