

The 8 Firms GCs Want For Employment Work

By **Vin Gurrieri**

Law360 (October 17, 2018, 9:36 PM EDT) -- Eight firms have caught the eye of general counsel as leading the pack when it comes to guiding businesses through employment suits during a time when high-stakes cases and the dollars companies set aside to litigate them are spiking, according to a new report.

In-house counsel who were surveyed for the Litigation Outlook 2019 report by BTI Consulting Group named eight notable general law firms and employment boutiques as being go-to "powerhouse" firms when it comes to handling either complex or everyday employment matters.

For complex cases, corporate counsel singled out Gibson Dunn & Crutcher LLP, Jones Day, Kirkland & Ellis LLP, Morgan Lewis & Bockius LLP and Reed Smith LLP as those that are top-of-mind to hire. When it comes to routine employment cases, boutiques Jackson Lewis PC, Littler Mendelson PC and Ogletree Deakins Nash Smoak & Stewart PC comprise corporate counsel's shortlist of "powerhouse" firms, according to the survey.

BTI founder Michael B. Rynowecer called the past year one of "very big change" in overall litigation, with the number of companies facing high-stakes cases more than doubling to 63 percent, which has helped fuel increased spending on outside counsel.

Of employment litigation specifically, he said the activism that has arisen out of the #MeToo movement, combined with traditional big-ticket wage-and-hour cases and state-level minimum wage increases, has led to litigation that leaves employers at greater risk, prompting them to take fewer chances on the outside counsel they hire.

"The sexual harassment [issue] has engendered more activism across the board," Rynowecer said. "So, between that increasing activism, the changes in regulation, the changes in wage requirements themselves, this is all creating more litigation, more complication and creating more complexity for clients, which is what's ultimately driving this increase."

BTI's report was based on more than 350 phone interviews it conducted with general counsel and other top legal decision makers at corporations with \$1 billion or more in revenue from early January through August. Those legal professionals represented more than 15 industries, including pharmaceutical, telecom, insurance and energy.

The report found that 92 percent of companies surveyed are facing some sort of employment litigation and pegged the potential growth in employment litigation in 2019 at 3.9 percent. It also projected the

overall market size for employment litigation to increase from \$4.58 billion to \$4.76 billion, which would be the highest number this decade.

Leaders at some of the eight firms named in BTI's report as powerhouses generally agreed with its assessment that there has been a broad increase in employment litigation over the past year.

"This is the most explosive year in our 60-year history in terms of litigation. Cases are flowing in to us," said Jackson Lewis chairman Vincent Cino.

To illustrate his point, Cino said the firm received 400 more new lawsuits by the end of June than it had received during the same time period in 2017. In particular, he said there have been many more sexual harassment cases than in recent years as well as more whistleblower cases and a general jump in the number of investigations the firm is performing for companies.

"Clients are taking these issues very seriously and they want to make sure there are no miscues along the way, so they are hiring us to investigate," Cino said.

Grace E. Speights, leader of Morgan Lewis' employment practice, offered a similar sentiment, saying it has been "just a tremendous year for us in terms of the amount of work across the board, but especially in the litigation area."

Along those lines, Reed Smith's national labor and employment practice leader Mark Temple told Law360 that his firm has sought to keep "practicality at the forefront" of its approach, as it has seen a general increase in a wide variety of complex litigation areas. And Ogletree shareholder and board member David Powell said his firm has appealed to corporate counsel in part by developing some internal tools to help lawyers better understand clients' businesses and expectations.

At Littler Mendelson, firm co-president Tom Bender said the firm has worked to develop "innovative processes" and related technology to produce "a better litigation and class action product" that is both effective and cost-efficient for clients to use, while the firm's other co-president, Jeremy Roth, added that clients generally "are responding in a positive way to firms like ours that are really trying to come up with proactive solutions to ... minimize the litigation problems of the past."

Rynowecer also explained that the distinction made by in-house counsel between everyday employment matters and cases that are complex generally has to do with the nature of the issues involved. For example, everyday matters generally involve recurring issues like hiring, immigration or wage regulation, while complex cases can involve sexual harassment allegations or certain class actions that are large and present a high level of risk.

BTI's report found that the overall market size for class action cases, including those outside the labor and employment context, is projected to increase for the fifth year in a row, to \$2.56 billion.

Unlike a year ago, when six firms cracked both of BTI's separate lists for complex and routine litigation, this year no firms did so. But four firms — Jones Day, Morgan Lewis, Littler Mendelson and Kirkland & Ellis — were recognized in this year's survey as powerhouse class action firms.

Rynowecer told Law360 that the general practice firms "are aggressively going after these big, complex" cases more than the boutique firms, but added that the latter group has "impressively" staked out their place on everyday matters.

“The boutiques are extraordinarily and impressively aggressive in carving out all the regulatory aspects and recurring aspects of this, whereas your general practice firms have recently been putting that same level of energy in getting the really complex things,” Rynowecer said.

He also identified a growing trend that businesses faced with more high-stakes cases are becoming increasingly less interested in hiring smaller, cheaper firms, even if they offer the same quality work as their larger competitors. Instead, he said, they are opting for the “certainty” of hiring “expensive, better, large teams” to handle their matters, even if those larger staffs lead to some higher initial costs.

“They don’t want it overstaffed to the point of being inefficient, but they’re thinking larger staffs are better than small staffs,” Rynowecer said.

--Editing by Emily Kokoll and Alanna Weissman.