



ELIZABETH D. MCPHAIL

Partner

emcphail@hodgsonruss.com 716.848.1530

Elizabeth represents both public and private sector employers regarding the full range of labor and employment-related issues. Elizabeth counsels management clients in a wide range of industries, including manufacturing, health care, nonprofit and social services, long-term/nursing care, and food preparation, regarding their rights and obligations under various labor and employment statutes, including counseling them regarding wage and hour issues, the Family Medical Leave Act (FMLA), the National Labor Relations Act, and state and federal anti-discrimination laws. In essence, Elizabeth helps employers avoid costly and time consuming issues involving their employees and resolve problems with those employees if avoidance proves impossible.

Elizabeth provides employment services to union and non-unionized clients regarding disciplinary action and terminations, defending discrimination claims, attending unemployment hearings, assisting with mass layoffs or reductions in force, drafting employment agreements and separation/severance agreements, and counseling clients about the application of various state and federal employment laws. She provides a wide range of labor services to union employers, including advice about negotiations, defending labor arbitrations, processing grievances, and general advice about navigating the union environment.

Since March of 2020, both public and private sector employers have faced increased and unprecedented challenges related to the coronavirus pandemic. Elizabeth's practice has included a focus on addressing pandemic related challenges, from safety issues (mask, testing, quarantines) to leave and accommodation related implementation under a myriad of state and federal laws.

Elizabeth also counsels school districts on a variety of topics, including negotiations with labor organizations, conducting discrimination investigations, teacher disciplinary issues, and general board of education governance.

The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202

Practices & Industries

Labor & Employment
Education
Accountant Professional
College & University
COVID-19 Litigation & Employment
Action Team
Employment Litigation
Food & Beverage
Media & First Amendment
Municipal

Admissions

New York
U.S. District Court, Western District of
New York

Education

Clemson University, B.A., *Cum Laude*
University at Buffalo School of Law,
J.D.

Elizabeth counsels European clients on a broad range of labor and employment legal issues related to expansion and acquisitions (due diligence) into the U.S. market.

Honors

- *Buffalo Business First's* 40 Under Forty Award, 2011
- Listed, *Best Lawyers in America* (Employment Law – Management) 2019 - 2022

Experience

Hodgson Russ has a full-service approach to handling problems for school district clients when public opinion is a particular concern. Over approximately a six-month period, the firm guided a school district client through disciplinary matters involving tenured teachers that garnered much public attention because of statements by an authority figure from a municipality. Not only did the firm give substantive advice on the disciplinary process for the employees, it also assisted the district in navigating the court of public opinion.

Hodgson Russ has defended clients in the public and private sectors against discrimination and retaliation complaints at the Equal Employment Opportunity Commission (EEOC) and various state administrative agencies. For example, we defended a client against a sexual harassment complaint from an employee. The client needed guidance investigating two internal sexual harassment complaints and an internal retaliation complaint. After the employee was subsequently terminated from employment for poor performance, the firm defended and secured a no probable cause determination from the New York State Division of Human Rights (NYSDGR). The well-organized internal investigation reports resulted in the successful defense of the matter at the NYSDHR.

Hodgson Russ successfully defended a New York State community college in a discrimination case with employees who filed multiple grievances with the NYS Division of Human Rights (NYSDHR) involving race, disability and gender. The complainants maintaining employment throughout the duration of the filing, investigation and resolution further complicated the matter. Our attorneys, led by partner Elizabeth McPhail, successfully defended the complaints at both the investigative state and at the hearing before an

Administrative Law Judge in a public hearing, with the determination of no probable cause.

Hodgson Russ handles the day-to-day and complex labor and employment related matters for various large food and beverage manufacturers, including union negotiations, advice on executive compensation, defense of employment-related disputes and advice on employee benefit matters.

Hodgson Russ attorneys have assisted employers as they navigate union organizing campaigns, negotiation of first contracts, and bargaining successor contracts, and have guided union clients through the administration of their grievance/arbitration provisions. We regularly counsel our nonprofit clients on union negotiations, including recently securing a broad and inclusive management rights proposal for a client that needs this flexibility in order to operate its programs under the confines of governmental grants. For other union clients, our attorneys adeptly address matters at the National Labor Relations Board. In June 2014, we negotiated a favorable settlement for a client in Michigan that faced large exposure in an unfair labor practice due in part to an indemnification clause in a contract for services with one of its customers.

In the News

Thought Leaders - COVID Turned the Workplace Upside Down and That's Good

Buffalo Business First, October 15, 2021

What could the federal vaccine mandate mean for businesses? An attorney weighs in.

Buffalo Business First, September 20, 2021

Thought Leaders: Labor & Harassment Laws

Buffalo Business First, March 27, 2020

Navigating the New Laws

Buffalo Law Journal, January 14, 2019

Buffalo Business First - Thought Leaders: First Amendment

Buffalo Business First, June 29, 2018

Press Releases

Fifty-Five Hodgson Russ Attorneys Ranked in 2022 Edition of *Best Lawyers in America*

Hodgson Russ Press Release, August 19, 2021

Fifty-Five Hodgson Russ Attorneys Ranked in 2021 *Best Lawyers in America*

Hodgson Russ Press Release, August 20, 2020

52 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings

Hodgson Russ Press Release, August 20, 2019

Forty-Eight Hodgson Russ Attorneys Named to Various Best Lawyers Listings

Press Release, August 15, 2018

Publications

New York Employers No Longer Required to Enforce HERO Act Exposure Prevention Plans, as COVID-19 Designation Expires

Hodgson Russ Labor & Employment Alert, March 23, 2022

New Posting Requirement – New York Department of Labor Issues Mandated Notice Under Enhanced Whistleblower Protection Law

Hodgson Russ Labor & Employment Alert, February 25, 2022

U.S. Congress Passes Significant Legislation Prohibiting Mandatory Arbitration of Sexual Harassment and Assault Claims

Hodgson Russ Labor & Employment Alert, February 25, 2022

OSHA Withdraws COVID-19 Emergency Temporary Standard to Focus on Permanent Standard; Sixth Circuit Appeal Dismissed as Moot

Hodgson Russ OSHA and Labor & Employment Alert, February 18, 2022

U.S. Supreme Court Enjoins OSHA's Covid-19 Vaccine-Or-Test Regulation, But Allows CMS Vaccine Mandate to Proceed

Hodgson Russ OSHA and Labor & Employment Alert, January 14, 2022

OSHA & CMS Vaccination Rules Move Forward As Supreme Court Mulls Arguments On Injunctive Relief

Hodgson Russ OSHA and Labor & Employment Alert, January 12, 2022

New York State Department of Labor Proposes Regulations on HERO Act Workplace Safety Committees

Hodgson Russ Labor & Employment Alert, January 5, 2022

New York State Department of Labor Adopts Paid Sick Leave Regulations

Hodgson Russ Labor & Employment Alert, January 4, 2022

U.S. Supreme Court Agrees to Hear Arguments on Applications to Stay the OSHA and CMS COVID-19 Vaccine Mandates

Hodgson Russ OSHA and Labor & Employment Alert, December 23, 2021

New York City Adopts Vaccine Mandate for Private Sector Workers

Hodgson Russ Labor & Employment Alert, December 20, 2021

Presentations & Events

2021 Labor & Employment Webinar Series

November 19, 2021

Labor and Employment 101 for the Food and Beverage Industry

July 27, 2021

School Client Conference Webinar Series 2021

January 15, 22, and 29

2020 Labor & Employment Webinar Series

November 19, 2020

New York State's Sick Leave Law: What Employers Need to Know Now

October 27, 2020

Reopening Schools: Legal Issues Involving Students and Staff

August 13, 2020

Getting Back on Campus: Preparing Your Institution's Reopening Plan and Limiting Your Exposure to Higher Education Class Action Lawsuits

July 8, 2020

What Employers Need to Know about Reopening the Workplace

May 15, 2020

Hodgson Russ Webinar - Coronavirus: What Employers Need to Know Now

March 20, 2020

35th Annual School Client Conference

Millennium Hotel, 2040 Walden Avenue, Buffalo NY 14225, January 17, 2020

Professional Affiliations

Elizabeth is a member of the New York State Bar Association and Bar Association of Erie County.

Community & Pro Bono

- Immediate past Chair of the Buffalo Olmsted Parks Conservancy Board of Trustees
- Board Member and Secretary of the Zonta International Empowering Women Through Service and Advocacy Club of Grand Island
- Board Member Board of Directors Planned Parenthood of Western New York; Professionals Committee Member