



Mark E. Tabakman

Partner

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Mark is a labor and employment lawyer who handles both union and non-union matters for employers across the country. He counsels human resource professionals and in-house counsel in complying with the myriad federal/state employment laws to provide creative, practical and cost-effective solutions to employment issues and problems.

Mark concentrates in wage-hour law. He has extensive wage-hour experience and has represented more than 200 clients before the United States and many state Departments of Labor on misclassification (i.e., white collar exemptions, independent contractor), working time, child labor and other issues. He is also experienced in defending companies in audits before the U.S. Department of Labor and at the state level.

He has deep experience in construction wage-hour law, where he represents construction contractors and sub-contractors in federal Department of Labor Davis-Bacon cases and audits, Service Contract Act cases and audits, state Department of Labor prevailing wage inspections, audits and debarment proceedings.

Mark publishes the [Wage & Hour — Developments & Highlights](#) blog to provide the latest information and his observations on new developments in wage-hour law, such as class actions, exemption/misclassification and working time issues.

He has defended a number of individual plaintiff and class overtime actions brought under the Fair Labor Standards Act and various state laws. Some of his representative matters include:

- A case of first impression, *UTU, Local 1759 v. ONE Bus Company*, 111 F.Supp.2d 514 (D.N.J. 2000), in which he successfully relied upon a single U.S. Department of Labor Opinion Letter to defeat a class action in which the agreed-upon damages were \$750,000.
- In *Moeck v. Gray Supply Company*, another class action, he defeated a motion for conditional class certification and succeeded in having the action dismissed via summary judgment, an uncommon occurrence at such an early stage in a class action.
- In *Kavanaugh v. Grand Union*, 192 F.3d 269 (2d Cir. 1999), the Second Circuit agreed with his argument that travel time of four to six hours was “ordinary” home-to-work commutation and therefore non-compensable.
- Where the New Jersey Department of Labor made a preliminary overtime assessment of more than \$400,000, he was able, in a single meeting with Department officials, to secure complete rescission of the overtime assessment and settle the case for a nominal record keeping penalty.

- In a case of first impression in the District of New Jersey, he successfully utilized an Offer of Judgment under Federal Rule of Civil Procedure 68 to dismiss an FLSA collective action.

Mark has concentrated on the high-profile, large-dollar exposure issue of exemption misclassification affecting the financial services and banking industries. He has presented at national conferences, addressed these issues in his [wage-hour blog](#) and has defended financial services employers in DOL audits.

Mark also has a strong background in traditional labor law. He has acted as Chief Spokesperson at numerous labor negotiations. He has arbitrated numerous cases involving both wrongful discharge and contract interpretation claims. He has defended employers in numerous NLRB proceedings, representational and unfair labor practice. He has also litigated several non-compete/restrictive covenant cases (on both the plaintiff and defendant side) as well as employment discrimination cases in federal and state courts.

Mark is a frequent guest speaker on wage-hour and employment law issues and has appeared on local and national television programs commenting on these matters. He authored a weekly column on labor and employment issues titled "Making the Law Work."

Some of his representative appearances include:

- Presentation on hot topics in Employment Law before HRMA Princeton's Annual Legal Seminar (March 21, 2018)
- Presentation on the impact of NLRA on nonunion employers as part of a Lorman webinar (March 8, 2018)
- Presentation on avoiding #MeToo claims and complying with shifting NLRA standards under the Trump NLRB before the New Jersey Department of Labor (February 9, 2018)
- Presentation on Department of Labor investigations/FLSA class actions and how to prepare for, defend and resolve them before the Blue Cross Blue Shield National Summit (May 11, 2017)
- Presentation on hot topics in Employment Law before HRMA Princeton's Annual Legal Seminar (March 21, 2017)

Beyond Fox Rothschild

Mark has served as the Vice Chair of the New Jersey Employer Council, a statewide employer organization devoted to providing information to employers and advocating for their concerns and interests throughout New Jersey. He is also Chair of the Board of Trustees of the New Jersey Foundation for Aging, an organization dedicated to advocating for older citizens on a number of fronts.

Honors & Awards

- Named among the New Jersey "Super Lawyers" in the field of Labor & Employment (2013 - 2018)
- Named to "Super Lawyers Business Edition" in the area of Employment and Labor Law (2013)

Practice Areas

- Labor & Employment
- Employment Class Actions
- Wage & Hour Law
- Trade Secrets
- Employment Counseling, Policy Developments & Audits



- Employment Litigation
- Employment Training
- Labor Management Relations
- Health Law

Bar Admissions

- New Jersey

Court Admissions

- U.S. Court of Appeals, Third Circuit
- U.S. District Court, District of New Jersey

Education

- Rutgers University School of Law (J.D., 1983)
- Cornell University (B.S., 1971)

Memberships

- American Bar Association
- New Jersey State Bar Association
- New Jersey Gasoline, C-Store, Automotive Association

Board of Directors

- New Jersey Foundation for Aging, Chair of Board of Trustees

Publications

August 11, 2015

Do Lower Oil Prices Signal a New Wave of FLSA Actions in the Energy Industry?

New Jersey Law Journal

March 4, 2015

Ghosts Of Micro-Units Past Come To Haunt Employers Again

Law360

January 29, 2015

New Jersey High Court Confirms Proper Test for Defining “Independent Contractor”

The WLF Legal Pulse

April 23, 2012

Opinions Do Count

New Jersey Law Journal

August 2011

The 'Wireless Ball and Chain' is Leading to Wage-Hour Lawsuits Against Employers

New Jersey Chamber of Commerce Enterprise

May 2011

Quicken Verdict Gives Employers Hope on Overtime

Workforce Management

December 15, 2009

Dispatchers and Overtime: Forty Miles of Bad Road

Truckinginfo

January 2007

The New Overtime Rules and the Dangers of Misclassification

New Jersey Business Solutions

October 2001

The Department of Labor Takes Aim At The Banking Industry

Banking Law Journal

Events

Hot Topics in Employment Law: HRMA Princeton's Annual Legal Seminar

March 21, 2018 at 8:00am – 12:00pm

New Jersey Hospital Association Conference Center

Hosted by: HRMA Princeton

The Breakfast Club

March 14, 2018

Asbury Festhalle & Biergarten

Hosted by: Asbury Park Chamber of Commerce

Impact of NLRA on Nonunion Employers

March 8, 2018 at 1:00pm – 2:30pm

Webinar

Hosted by: Lorman

Hot Tips on Avoiding #MeToo Claims and Complying with Shifting NLRA Standards Under the Trump NLRB

February 9, 2018 at 9:00am – 10:30am

Fox Rothschild LLP

Hosted by: Fox Rothschild LLP and the New Jersey Department of Labor and Workforce Development's Division of Workforce Field Services

Department of Labor Investigations/FLSA Class Actions: How to Prepare for Them, Defend Them and Resolve Them

May 11, 2017 at 11:15am – 12:15am

Orlando World Center Marriott



Hosted by: Blue Cross Blue Shield 2017 National Summit

Hot Topics in Employment Law: HRMA Princeton's Annual Legal Seminar

March 21, 2017 at 8:00am – 12:00pm

New Jersey Hospital Association Conference Center

Hosted by: Human Resources Management Association Princeton

New Jersey Prevailing Wage Update

December 15, 2016 at 1:00pm – 2:30pm

Live webinar

Hosted by: Lorman Education Services

Labor and Employment Issues Facing Our Industry Today

November 2, 2016 at 9:00am – 11:00am

Hosted by: Health Care Association of New Jersey

2016 New Jersey Statewide Payroll Conference

October 7, 2016 at 10:00am – 11:30am

Iselin, NJ

Hosted by: American Payroll Association

Emerging Issues in Employment Practice Liability

June 16, 2016 at 2:15pm – 3:15pm

Convene Times Square

Hosted by: Corporate Synergies' Experience360

Employee Use of Social Media in Today's Workplace

May 16, 2016

Orlando World Center Marriott

Hosted by: Blue Cross/Blue Shield National Summit

The Impact of the National Labor Relations Act on Non-Union Employers

May 6, 2016 at 1:00pm

Webinar

Hosted by: Compliance World

Regulatory Update: Drafting Employee Handbooks

March 24, 2016 at 1:00pm – 2:30pm

Webinar

Hosted by: Compliance World

The Impact of the National Labor Relations Act on Non-Union Employers

January 28, 2016 at 1:00pm – 2:30pm

Webinar

Hosted by: Compliance World

New Jersey Prevailing Wage Law Update

December 16, 2015 at 1:00pm – 2:30pm

Webinar

Hosted by: Lorman Education Services

Compensating Commissioned Employees – Costly FLSA Exemption & Overtime Traps To Avoid

December 3, 2015 at 2:00pm – 3:15pm

Webinar

Hosted by: Center for Competitive Management

Working Time Issues

October 1, 2014

Hosted by: New Jersey Gasoline-Convenience-Automotive Association

Navigating Collective Bargaining Agreements and Prevailing Wage Requirements in the New York Construction Industry

February 17, 2010

Hosted by: Fox Rothschild LLP

News

December 18, 2017

Use of Fluctuating Workweek Method To Pay Overtime Must Have a Fixed Salary

Employee Benefit Adviser

February 3, 2015

Fox Rothschild Named a “Go-To Law Firm” in Annual Survey of Fortune 500 Companies

June 20, 2014

Wage-and-Hour Suits Surging, Fueled by Economic Conditions

New Jersey Law Journal

March 3, 2014

Overtime Pay For Attorneys

The General Counsel

July 11, 2012

Offer of Judgment May Yet Be Vindicated As a Means for Defeating FLSA Collective Action

Lexology Readership Alert

June 21, 2012

Payout of Vacation Time, PTO Time Depends on Company Policy and State Law

Lexology Readership Alert

March 27, 2012

Right to Retroactively Amend Handbook Makes Arbitration Clause Unenforceable

Inside Counsel

March 14, 2012

Swamp People Can Be Employees Too!

Lexology Readership Alert



March 9, 2012

Who is the "Employer" Under the FLSA: Second Circuit Addresses the Issue of Individual Liability for the CEO of Gristede's

Lexology Readership Alert

March 7, 2012

Another Working Time Case: Whether on Land or Sea, the Time Must Still be Paid!

Lexology Readership Alert

February 22, 2012

When Is An "Intern" An Employee Under The FLSA?

Lexology Readership Alert

February 13, 2012

24 Hour Fitness Ruled Out of Shape: Barred from Using Arbitration Provision in FLSA Collective Action

Lexology Readership Alert

February 8, 2012

Lessons to be Learned From Another Successful Defense of an Assistant Manager Class Action

Lexology Readership Alert

November 30, 2011

FLSA Computer Exemption to Get Revised: A Good Thing for Employers

Lexology Readership Alert

December 6, 2010

Don't Get Hit With an Overtime Claim

Rhode Island Lawyers Weekly

March 1, 2010

Law Firm Faces Suit Over FLSA Violation

LawyersUSA