



## Mark E. Tabakman

Partner

Princeton, NJ

Tel: 973.994.7554

Fax: 973.992.9125

[mtabakman@foxrothschild.com](mailto:mtabakman@foxrothschild.com)

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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 (April 23, 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 Law School (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**

April 23, 2018 at 8:00am – 12:00pm

New Jersey Hospital Association Conference Center

Hosted by: HRMA Princeton

**Wage and Hour Issues in 2018**

April 19, 2018 at 5:00pm – 7:00pm

Homewood Suites

Hosted by: North Jersey Chapter American Payroll Association

**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

June 14, 2018

**'Epic Systems,' Heading Off 3rd Circuit's Ruling on Class Waivers, Seen as Curb on Wage Litigation**

New Jersey Law Journal

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