

Health Care Employment and Labor

Counseling and Training to Prevent and Manage Discrimination Claims

The training of employees is critical, especially in an overall plan to avoid potentially damaging claims and to help reduce a health care employer's potential liability when a claim is brought. Sills Cummis & Gross lawyers have trained managerial employees at hospitals and other health care facilities on sexual harassment, on how to take action that protects the health care facilities (including how to take appropriate disciplinary action against offending employees), and on how to evaluate employee performance. We counsel management on Family and Medical Leave issues, wage and hour, disability, WARN, COBRA, and insurance issues (such as employer practices liability and workers' compensation insurance). We also advise clients on how to conduct terminations, disciplinary actions, and promotions to best avoid possible claims.

Our lawyers are adept at drafting employer policies and procedures manuals as required by law, including policies against harassment in the workplace. We prepare employment and separation agreements. We also review employment applications to ensure that they comply with equal opportunity employment and fair credit reporting laws.

Collective Bargaining/Union Avoidance

Quality labor relations advice is a combination of legal knowledge and the common sense ability to get things done. Sill Cummis & Gross lawyers pride themselves on blending those skills to the benefit of our health care clients, many of whom are already in a unionized environment. The Chair of our Employment and Labor Practice Group was originally trained in the labor relations area. He has negotiated a substantial number of collective bargaining agreements on behalf of health care clients and he has the ability to quickly understand the needs of both sides at the bargaining table and use this insight to their advantage when representing hospital management.

Additional Experience

- Interpreting and applying collective bargaining agreement provisions.
- Handling and/or assisting in the grievance and arbitration process.
- Handling all aspects of labor litigation, including unfair labor practice charges, administrative trials, and representation and compliance proceedings before the NLRB.
- Developing strike contingency plans.
- Seeking secondary boycott and other interim injunctive relief pursuant to federal labor law.
- Advising on informational and "common situs" picketing activities.
- Handling of other NLRB claims, statutory priority claims and appeals.
- Developing effective pre-election campaigns to thwart union organizing drives.
- Negotiating union organizing "neutrality agreements" when in the health care client's best interests.

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- Conducting supervisory and managerial training to avoid objectionable pre-election activity by employer representatives.

Employment Litigation

When litigation is unavoidable, the employment attorneys of Sills Cummis & Gross advocate aggressively for their clients in state and federal courts. They have successfully defended hospitals and other health care clients against wrongful discharge and discrimination claims involving age, race, disability, gender and pregnancy, alleged violations of family leave, whistleblower, equal pay and other statutes. We have won numerous summary judgment motions for our clients in these matters, including claims of breach of contract, national origin discrimination, defamation and intentional infliction of emotional distress violations.

Representative Matters

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- Representation of several New Jersey, New York and other out of state hospitals in maintaining union-free status, and representation of other hospitals and other health care entities in union negotiations, labor arbitrations, unfair labor practice charges and other NLRB representation proceeding matters.
- Representation of hospitals in connection with major reductions-in-force, so as to reduce potential employment and labor exposure.
- Representation of hospitals in discrimination and whistleblower lawsuits, some of which were dismissed on summary judgment, and, others which were favorably settled.
- Providing sexual harassment training to a hospital's emergency medical department (approximately 500 employees), inclusive of handout materials, questionnaires and a two-hour training session.
- Preparation of a 20-minute video to be used in training physicians about a hospital's sexual harassment policy.
- Preparing employment policies, including policies regarding anti-discrimination, tuition reimbursement, overtime, leave, on-call, confidentiality, anti-violence, reasonable accommodations and effective supervision.
- Preparing guidelines for conducting investigations and appropriate record keeping for such investigations.
- Responding to "lawyer letters" sent on behalf of discharged employees.
- Preparing employment agreements (including restrictive covenant provisions), as well as severance/separation agreements for employees.
- Providing ongoing advice regarding terminations, discipline, implementation of the federal Family and Medical Leave Act, various State Family Leave Acts and other leaves available under

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hospital policies; disability issues and reasonable accommodations, discrimination and harassment claims, substance abuse and diversion of medication, and other personnel issues.

- Preparing tuition reimbursement agreements and confidentiality/non-disclosure agreements.
- Advising hospitals with respect to hiring employees from competitors, and avoiding potential “raiding” liability.
- Advising hospitals regarding the preparation of personnel documents, employee handbooks/manuals and social media policies.
- Advising hospitals regarding wage and hour issues, and responding to Department of Labor audits and record review requests.

Employment Litigation

- We have defended multiple discrimination claims before the New Jersey Division of Civil Rights and the Federal Equal Employment Opportunity Commission. Our attorneys secured a no probable cause finding in most matters and negotiated nominal (less than \$2,500) settlements in several other matters.
- We have represented and continue to represent several hospitals and health systems in various wrongful discharge and discrimination lawsuits, including allegations of sexual harassment/hostile work environment, race discrimination, religious discrimination, age discrimination, whistleblower and reverse discrimination. Our Employment and Labor Practice Group Chair previously obtained a defense verdict following a Superior Court jury trial on behalf of a prominent Bergen County acute care hospital, and a defense judgment following a federal court bench trial on behalf of a prominent New York City-based hospital.
- We advise hospitals in multiple sexual harassment, race and disability discrimination claims brought by employees pursuant to the hospitals’ anti-discrimination policies, including investigations, fact finding, preparation of documentation, imposition of corrective action, review of hospital bylaws and coordination with Medical Staff to impose corrective action.
- We represented a hospital in connection with several multi-plaintiff discrimination lawsuits brought in response to a major reduction-in-force by the hospital. The results were favorable – some cases were dismissed on a motion to dismiss, some cases were dismissed on summary judgment, and other cases were settled on terms that were favorable to our client.
- We represented a prominent Bergen County acute care hospital in an action for “wrongful dismissal” commenced in the Superior Court of New Jersey, raising approximately 12 common law tort claims stemming from plaintiff’s termination of employment. Summary judgment was granted to our client on 11 of those claims at the conclusion of discovery and a verdict for our client was granted following a one-week jury trial on the remaining “false imprisonment” cause of action.
- We represented a major New York acute hospital in an action for race discrimination filed in the United States District Court for the Eastern District of New York by a terminated 25-year African American employee and obtained a favorable judgment for our client following a one-week bench trial.

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- We represented a prominent Orange County, New York acute care hospital in an action for race discrimination filed in the United States District Court for the Southern District of New York by a terminated employee. The matter was settled favorably for our client in lieu of post-judgment motions and/or Circuit Court appeal.
- We represented a nursing home facility in an action for gender discrimination filed in the United States District Court for the Eastern District of New York by a terminated employee and secured a judgment for our client following a three-day bench trial.