

## EMPLOYMENT & LABOR



## OVERVIEW

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Foulston Siefkin's Employment and Labor lawyers advise and represent employers in the full range of issues arising from the employment relationship. The firm's diverse clientele includes private and public sector employers of all sizes, from Fortune 500 companies to small businesses and non-profit organizations. Our lawyers regularly defend wrongful and retaliatory discharge claims and race, age, gender, and disability discrimination claims at the administrative level and in state and federal court. We assist employers with OSHA investigations and citations, Department of Labor audits, and wage claims under state and federal wage and hour laws.

In addition to advocacy, a significant portion of our practice is dedicated to providing clients with accurate and practical employment advice, with the goal of avoiding litigation. We regularly advise management and human resources professionals, provide practical management training, and assist in implementing appropriate employee handbooks, other policies and procedures, and affirmative action and EEO plans. Our labor lawyers have considerable experience in responding to union organizing efforts, representing employers in unfair labor practice proceedings, and negotiating collective bargaining agreements.

For updated news on local, state and federal employment law issues, please visit our blog at: [FoulstonEmploymentLawBlog.com](http://FoulstonEmploymentLawBlog.com).

Update your FMLA policies and forms with Foulston Siefkin's 2013 FMLA Compliance Manual & Forms.

## AREAS OF REPRESENTATION

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Foulston Siefkin offers its clients a full-service employment and labor law practice, with attorneys experienced in a wide range of employment practice areas including:

## **Employment Litigation**

Foulston Siefkin has a long history of representing clients in employment related litigation matters. We defend federal claims arising under numerous laws, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Equal Pay Act and the Family and Medical Leave Act. We also encounter state law employment claims under numerous theories, including breach of implied contract and whistleblowing. We strive to provide our clients with outstanding legal services at a reasonable cost. Our litigation practice includes the use of legal assistants when appropriate and advanced information technology. While we prepare our cases as though they will be tried, we are proud of our record of obtaining summary judgment or dismissal of many of the employment lawsuits we handle.

## **Employment-related Class Actions**

Foulston Siefkin lawyers have handled numerous class action and qui tam litigated matters on a broad range of topics. Our employment lawyers have served as both lead counsel and local counsel in significant class action litigation involving claims of race and gender discrimination.

## **Supervisor Training**

Foulston Siefkin provides clients large and small with practical management training services. We provide training on a variety of topics with the goal of giving our clients the tools they need to make and document good employment decisions. Our training is specifically crafted for each client's needs but typically includes topics such as avoiding and recognizing workplace harassment, understanding discrimination laws, hiring, discipline and firing, ADA compliance, FMLA compliance, conducting workplace investigations, union avoidance and wage and hour compliance. At Foulston Siefkin we believe that we add value to our clients' businesses by providing them with legally sound and practical human resources information. Our management and supervisor training services are prepared and carried out with that goal in mind.

## **Human Resources Counseling**

Foulston Siefkin employment lawyers provide human resources professionals, managers, and business owners with employment advice on a daily basis. We believe that we add value to our client's businesses by providing them with legally sound and practical human resources information. Our lawyers review and prepare employee handbooks, draft or update policy and procedure manuals, prepare employment agreements, including non-competition and confidentiality agreements, and counsel decision-makers in matters relating to hiring, discipline, and discharge. In addition, we prepare Affirmative Action and EEO plans, assist in OFCCP and other audits, and give advice on the full range of issues that arise from the employer/employee relationship.

## **Workplace Investigations**

Employee complaints regarding discrimination, harassment, and other workplace issues are common. Foulston Siefkin lawyers have extensive experience in identifying the need for, assisting with, or carrying out workplace investigations. Our lawyers can also provide human resources professionals with advice,

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training, and materials to help them complete effective and sound workplace investigations.

### **Agency Proceedings and Compliance**

Foulston Siefkin counsels and represents employers in agency and administrative proceedings before numerous state and federal agencies, including OSHA, EEOC, OFCCP, the Department of Labor, the Kansas Human Rights Commission, the Kansas Department of Human Resources, and others. Our lawyers provide compliance advice, assist in investigations, conduct negotiations and appear in agency and administrative hearings.

### **Alternative Dispute Resolution**

Our lawyers often represent employers in mediation and arbitrations in a variety of employment related claims. In employment cases where a client is not involved, several of our lawyers serve as fair and effective mediators and arbitrators.

### **Government Liability**

Foulston employment lawyers have considerable experience working with government entities and their unique employment challenges. We represent public entities at all levels of government, including cities, counties, and school districts, in managing their relationships with their employees, and we defend those entities when litigation is unavoidable.

### **Employee Benefits**

Our lawyers focus our practice on working closely with our clients' human resources staff, in-house counsel, and/or benefits consultants to provide practical, innovative; and business-centered approaches to meeting our clients' needs. In doing so, we offer a full range of services in the area of employee benefits law with an emphasis placed on achieving the client's desired tax benefits, while at the same time complying with the substantive rules of ERISA, the Internal Revenue Code and applicable state law.

### **Immigration**

Today's immigration laws and regulations have become increasingly relevant to employers of all sizes and within every industry. The combination of our modern economy's ever-increasing demand for educated and skilled employees and the demographic changes occurring in our own domestic population has dramatically increased the need for foreign labor. At Foulston Siefkin, we can help guide your company through the ever-changing maze of immigration laws and regulations to help meet your employment needs. We have assisted employers and individuals alike with employment-based immigrant and non-immigrant (H-1B Visa) petitions and family-based petitions. In addition, we have advised employers with respect to various work-authorization issues (such as I-9 compliance) and the avoidance of immigration related discrimination offenses.

### **OSHA/Workplace Safety**

Compliance with federal and state requirements on workplace health and safety costs employers millions of dollars each year. In addition to civil penalties charged by OSHA and state occupational safety and health agencies, companies not complying with these laws may also be subjected to criminal fines and imprisonment.

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Foulston Siefkin LLP, Kansas' largest law firm, represents large corporations and small businesses in compliance with OSHA standards on process safety management, hazardous chemicals, lockout/tagout, permit-required confined spaces, hazard communication, hazardous waste operations and emergency response, respiratory protection, bloodborne pathogens, recordkeeping, toxic substance exposure (including asbestos, cadmium, lead, hydrogen sulfide, hydrogen fluoride, cyanide, and methane), and a wide variety of other safety concerns.

Foulston Siefkin attorneys have the experience and specialized knowledge to understand the related issues to help clients comply with federal and state laws on workplace safety and health. By choosing Foulston Siefkin, a full service law firm, clients will have access to attorneys with extensive OSHA experience along with other attorneys across several related practice areas including agribusiness, litigation, construction, employment and labor, environmental law, mergers and acquisitions, and energy.

Our attorneys will work closely with clients and with engineering, safety, and industrial hygiene experts to meet specific occupational safety and health needs. We represent clients before the Occupational Safety and Health Review Commission and in both state and federal courts.

### **Wage & Hour/FLSA**

Foulston Siefkin attorneys regularly advise employers on matters involving compliance with federal and state minimum wage, overtime, wage payment, and other wage and hour laws. This includes advising employers on payroll matters and otherwise helping employers to be proactive in recognizing and eliminating potential wage and hour issues, as well as defending employers involved in wage and hour litigation, including audits with the Department of Labor.

### **Labor Relations**

Foulston Siefkin attorneys have considerable experience in representing and advising public and private employers in all phases of labor relations. We have assisted in responding to union organization efforts on behalf of a diverse group of clients and have negotiated numerous collective bargaining agreements involving units as large as 5,000 and as small as five.

### **Union Avoidance**

Our lawyers advise union-free employers regarding effective responses to union organizing campaigns and are experienced in preparing and presenting evidence and legal arguments before the National Labor Relations Board (NLRB) and the federal courts arising out of union organizing efforts. Foulston Siefkin provides training, guidance, and counseling regarding the National Labor Relations Act and the Railway Labor Act and union representational proceedings and elections.

Union avoidance can be achieved only through diligence along with attention to the desires and sentiments of employees. Foulston Siefkin can assist employers periodically audit their work force to determine whether management's relationship with its employees remains strong or whether problems exist that may make the employees receptive to union organizing. We counsel employers regarding the development of lawful positive employment practices and employee relations programs designed to foster employee support for union-free status. We assist in developing an atmosphere which makes unions unnecessary which may lead to NLRB decertification proceedings.

### **Union Collective Bargaining**

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The collective bargaining process begins when the majority of workers in an appropriate bargaining unit vote to be represented by a specific union. The National Labor Relations Board then certifies the union. At this point, the management of the organization must recognize the union as the collective bargaining agent for all the employees in the bargaining unit. Once this part of the process is completed, collective bargaining can begin. We assist clients in developing a labor strategy to accomplish the outcomes desired from the collective bargaining process. Foulston Siefkin attorneys counsel unionized employers before, during and after bargaining sessions on legal questions, collective bargaining strategy, and tactics; drafting and analyzing proposals; and responding to union information requests. Our attorneys have served as the chief spokespersons in labor negotiations covering a cross-section of public and private employers. Our experience includes strike preparation, managing labor relations through the course of a strike, hiring replacements, negotiating concession contracts, negotiating a first contract, as a successor employer, and negotiating as part of a workforce shutdown. Foulston Siefkin attorneys then advise employers concerning the administration of the collective bargaining agreements and represent our clients in litigation to enforce collective bargaining agreements.

### **Union Arbitration**

Foulston Siefkin attorneys have handled many arbitration cases concerning the interpretation of collective bargaining agreements. Arbitration resolves conflicts of interpretation over the established terms and conditions of employment, for example, the wage rate, working hours, and justification for employee termination. In labor relations, these terms and conditions are negotiated through collective bargaining, and agreements are formalized in collective bargaining agreements or union contracts. Many matters can be resolved through negotiation and mediation. Others require resolution before an independent arbitrator. Our cost-effective representation during arbitration proceedings is aided by our substantial courtroom experience helping to achieve favorable outcomes for our clients.

### **Union Grievances**

An employee may be entitled by a collective bargaining agreement to seek relief through a particular series of steps called a grievance procedure. In an unionized organization, a grievance is a formal complaint against the employer, in written format, filed by a union on behalf of a member of the local union. It is typically understood as any difference arising out of the interpretation, application, administration or alleged violation of the collective bargaining agreement that is in effect at the place of employment but it can also concern violations of common law, such as workplace safety regulations or a human rights code. Our attorneys assist companies in responding to contractual grievances and representing them in proceedings.

### **RELATED LINKS**

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- [FMLA Compliance Manual and Forms](#)
- [Employers Counsel Network](#)
- [Midwest Employment Law Newsletter](#)
- [Society for Human Resource Management](#)
- [HRhero](#)
- [Kansas Hospital Human Resources Association](#)



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## EXPERIENCE

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- Defense counsel in gender discrimination class action claims against The Boeing Company in the federal courts of Kansas and Oklahoma.
- Plaintiff's counsel in trial of wrongful termination claim for corporate president, resulting in substantial actual and punitive damage award.
- Plaintiff's counsel in Koch Engineering Co. v. Faulconer, 227 Kan. 813, 610 P.2d 1094 (Kan. 1980) and 239 Kan. 101, 716 P.2d 180 (Kan. 1986), involving injunctive relief for misappropriation of trade secrets and related proceedings.
- Lead counsel in numerous state court and jury and bench trials involving claims of personal injury and property, commercial claims involving claims of unfair competition, and claims alleging deceptive practices under the Packers and Stockyard Act; second chaired five-week medical malpractice trial resulting in defense verdict and six-week trial involving claim of property damage from asbestos contamination; has taken numerous depositions of party, fact and expert witnesses in medical malpractice, product liability, fraud, intentional infliction of emotional distress, breach of fiduciary duty, breach of contract, retaliatory discharge, and a variety of state and federal law discrimination, competition, and business tort claims.
- Currently represents clients in numerous employment law cases as well as cases alleging violations of the Packers and Stockyards Act; a class action claim alleging gender discrimination; a class action antitrust and price-fixing claim; class action claims under the Fair Labor Standards Act; claims alleging breach of contract and fraud in the sale of significant closely held business concerns; and claims involving unfair competition, breach of fiduciary duty, and tortious interference with contract and business relations.
- Served as defense counsel in gender discrimination class action cases against the Boeing Company in the federal courts of Kansas and Oklahoma. See, e.g., Carpenter, et al. v. Boeing, No. 02-1019, 2004 U.S. Dist. LEXIS 24296 (D. Kan. Feb. 24, 2004).
- Successfully represented national manufacturers in serious product liability cases in both state and Federal court. Recently obtained summary judgment on behalf of a general contractor in a complicated multi-million dollar construction case and successfully defended a physician in a medical negligence case involving the flesh-eating bacteria, Group A Streptococcus.
- Creation of a diversity awareness program for a 30,000 employee workforce.
- Our attorneys have tried numerous employment arbitrations in both union and non-union settings. Issues have included employment terminations, suspensions, the terms of a golden parachute agreement, and general contract interpretation. They have also represented employers as an advocate in several NLRB hearings and has defended employers in contested OSHA hearings.
- Foulston Siefkin attorneys have participated in adversarial hearings in a wide range of forums on behalf of employer clients. These hearings include an OSHA trial to an OSHRC administrative law judge, several NLRB hearings, and several labor arbitrations involving issues ranging from employment terminations to contract interpretation disputes.
- Foulston Siefkin attorneys currently represent clients in numerous employment law cases as well as cases alleging violations of the Packers and Stockyards Act; a class action claim alleging gender discrimination; a class action antitrust and price-fixing claim; class action claims under the Fair Labor Standards Act; claims alleging breach of contract and fraud in the sale of significant closely held business concerns; and claims involving unfair competition, breach of fiduciary duty, and tortious interference with contract and business relations.
- Foulston Siefkin attorneys also regularly represent employers in state and federal court litigation, generally involving allegations of employment discrimination. These suits have included defending both individual and class actions.

### Foulston Employment Law Blog

Debate Continues on Whether Title VII Prohibits Discrimination Based on Sexual Orientation (Authored by: J. Steven Massoni, 04/05/2017)

After over a year of waiting and wondering, the Department of Labor finally issued its proposed amendments to the white-collar exemptions under the Fair Labor Standards Act. These are often referred to as the salaried exemptions because of the threshold requirement that the employee be paid on a salary basis at a minimum salary level. As you may recall, the impetus for these changes was direction from President Obama that the exemptions were too many employees were being treated as exempt. In other words, the stated goal of the proposed changes was to make sure that more employees will become non-exempt and thus entitled to overtime.

[READ MORE](#)

### ISSUE ALERTS

#### 2025

Missouri Employers: Deadline to Implement Paid Sick Time Under Missouri Proposition A is April 15, 2025

#### 2024

Texas Federal Court Strikes Down FTC's Non-Compete Ban on a Nationwide Level

Employers Should Prepare for the FTC's Non-Compete Ban to Go Into Effect Sept. 4; Federal District Court Refuses to Block the Ban

Texas Federal Court Blocks FTC's Non-Compete Ban Enforcement for Plaintiffs in the Case – With Potential for Broader Injunctions

FTC Issues Final Rule Banning Non-Compete Agreements

EEOC Issues Final Regulations Interpreting the Pregnant Workers Fairness Act

Ringing in the New Year, the U.S. Department of Labor Publishes Final Rule on Independent Contractor Classification Under the FLSA

#### 2023

COVID-19 Vaccination Requirements for Federal Employees, Federal Contractors, and CMS-Certified Providers Will End

Review Health Professional Overtime Policies In Wake of February Supreme Court Ruling

#### 2022

Coronavirus: Supreme Court Green Lights Vaccine Mandate for CMS; Stalls OSHA

#### 2021

Coronavirus: Side Effects From OSHA's Withdrawal of COVID-19 Healthcare ETS

Coronavirus: OSHA Vaccine-or-Test Mandate for Large Employers Active Again

Coronavirus: UPDATE: Court Temporarily Halts Federal Contractor Vaccine Mandate Nationwide

Coronavirus: Kansas Gov. Kelly Signs Bill Banning Firing Employees Seeking Waivers From Mandatory Vaccine Requirements

Coronavirus: UPDATE: Fifth Circuit Continues Stay of OSHA ETS for Large Employers

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Coronavirus: UPDATE: Court Stays OSHA Emergency Temporary Standard for Large Employers  
Coronavirus: OSHA Releases ETS Requiring Large Employers to Mandate Vaccines or Provide Weekly Testing  
Coronavirus: American Rescue Plan Act Expands FFCRA Voluntary Leave Tax Credit Program

### 2020

Coronavirus: Year-End Stimulus Legislation Provides PPP Enhancements and Other COVID-19 Relief  
Coronavirus: DOL Revises Paid Leave Requirements Under FFCRA  
Coronavirus: New York Court Vacates Portions of FFCRA Regulations  
Supreme Court Rules Title VII Prohibits LGBTQ Discrimination  
Coronavirus: Maintaining Privacy and Data Security with a Remote Workforce  
Coronavirus: State of Missouri Issues Stay-at-Home Order  
Coronavirus: What Should Your Business Be Doing to Comply with the Law and Take Advantage of Stimulus Dollars?  
Coronavirus: U.S. Department of Labor Issues Regulations Explaining Paid Sick Leave and Expanded FMLA Benefits Under FFCRA  
Coronavirus: Rapid Funds Available Now For Businesses In 35 Kansas Communities  
Coronavirus: Kansas Gov. Issues Statewide Stay-At-Home Order  
Coronavirus: Key Tax and Business Provisions  
Coronavirus: DOL Issues FFCRA Employee Notice Form  
Coronavirus: Shawnee County Issues Safer at Home Order  
Coronavirus: Sedgwick County Issues Stay-at-Home Order  
Coronavirus: Tax and Employee Benefit Considerations  
Coronavirus: Stay-at-Home Orders?  
Coronavirus: Essential Services  
Coronavirus: Families First Coronavirus Response Act Becomes Law  
Coronavirus: Employer Tips for Managing COVID-19

### 2019

DOL Proposes New Rules for Tipped Employees  
Pay Data Reporting Is Back (For Now)

### 2018

Confidential Sexual Harassment Settlements Not Tax-deductible

### 2017

Protect Your Employees, and Your Organization, From Harassment

### 2016

?Federal Court Puts FLSA Salary Increases on Indefinite Hold  
Department of Labor Issues Long-Awaited Updates to Key Fair Labor Standards Act Overtime Exemptions

### 2015

Federal Contractors Will Have to Provide Paid Sick Leave  
Bank Misclassified Appraisers as Exempt from Overtime Pay, Court Says  
NLRB Joint Employer Ruling  
OFCCP Publishes Final Pay Transparency Regulations for Government Contractors  
How Will the Supreme Court's Ruling on Same-Sex Marriage Impact Kansas Employers?



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### **2014**

December 2014 Affirmative Action Update

### **2013**

HHS Focuses on Privacy with at long last Final Regulations and New Guidance

### **2012**

Healthcare Providers' Affirmative Action Obligations Take Center Stage  
OSHA Targeting Nursing and Residential Care Facilities

### **2011**

New Notice Rule Reaches Out to Union and Non-Union Employers Alike  
Employers with Salaried Non-Exempt Employees Beware! New DOL Regulations Change How You May Pay These Employees

### **2010**

New Kansas Smoking Ban Directly Affects Employers

### **2008**

2009 FMLA Forms and Compliance Manual  
E-Verify and the New Federal Contractor Requirements  
The ADA Amendments Act (ADAAA) Will Impact How School Districts Evaluate Section 504 Cases

## **ARTICLES**

### **2025**

Background Check Laws: Kansas  
-Practical Law

### **2024**

Your Company's Benefit Plan  
-TK Business Magazine

### **2015**

Christmas Vacation, Free Beer, and the FLSA  
-Kansas Employment Law Letter, Vol. 22, No. 9  
J-Law and the 'Hustle' for Equal Pay  
-Byers' Market, Kansas Employment Law Letter, Vol. 22, No. 9  
Wrestling over equal pay  
-Lexology  
New ACA FAQs Clarify the Preventive care mandate  
-Lexology  
What's going on under the green dome?  
-Lexology  
Federal legislation would clarify wellness plan treatment under ADA and GINA  
-Lexology  
DOL spouse rule on hold in four states  
-Lexology  
NLRB election rule challenged  
-Lexology

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Can Angry Birds make employees happy (and productive)?

-Lexology

NLRB quickie election rule faces Congressional attack

-Lexology

Like a Girl Superbowl commercial

-Lexology

Court Invalidates DOL change to companionship exemption

-Lexology

New OSHA reporting rule goes into effect

-Lexology

Top ten most frequently cited OSHA standards for FY2014

-Lexology

Governor rescinds anti-discrimination protection for LGBT state employees

-Lexology

DOL continues to add states to employee misclassification initiative

-Lexology

Termination goes south

-Lexology

Make sure you're not singing the summertime blues

-Lexology

How will the Supreme Court's ruling on same-sex marriage impact Kansas employers?

-Lexology

For Discrimination, it depends on what the meaning of the word "sex" is

-Kansas Employment Law Letter

### 2014

Employment & Labor in Missouri - Lexology Q & A

-Lexology

Employment & Labor in Missouri - Lexology Q & A

-Lexology

A freaky non-compete non-sequitur

-Lexology

DOL updates COBRA notice regulations and model COBRA notices

-Lexology

The lessons of the recent Ebola outbreak

-Lexology

Corporate media policy runs afoul of the National Labor Relations Act

-Lexology

Court of Appeals weighs in on H-2B wage rule

-Lexology

DOL delays proposed amendments for white collar exemptions

-Lexology

Royals, Royals, Royals

-Lexology

Kansas Supreme Court describes tool to determine employment status under KWPA

-Lexology

EEOC challenges another wellness plan under the ADA

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-Lexology

NLRB opens company email up for employee use in organizing campaigns

-Lexology

EEOC concern about targeted job advertisements

-Lexology

EEOC catches grief over wellness plan litigation

-Lexology

Facebook like Protected concerted activity

-Lexology

Happy Labor Day!!!

-Lexology

DOL proposes rule to raise minimum wage for federal contract workers

-Lexology

Drunk employee who fell through roof still gets workers' comp

-Lexology

Foreign student employment

-Lexology

Municipalities subject to new employment rules relating to handguns

-Lexology

Affirmative Action Update - December 2014

-Lexology

## 2011

Fun in the Sun? Not While on FMLA Leave

-Kansas Employment Law Letter

New Notice Rule Reaches out to Union and Nonunion Employers Alike

-Kansas Employment Law Letter

Kansas Supreme Court makes Husky Hogs squeal

-Kansas Employment Law Letter, Vol. 18, No. 4

## 2010

Get the message: OSHA says employers must ban texting while driving

-Kansas Employment Law Letter, Vol. 17, No. 8

## 2008

2009 FMLA Forms and Compliance Manual

-Foulston Siefkin LLP

## 2007

Employee's Wage Claim Against Telephone Company is Disconnected

-Kansas Employment Law Letter

# FOULSTON

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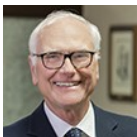
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