



## Practice Area

# Labor and Employment

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Jennings Strouss' management-oriented labor and employment practice devotes a significant amount of time to preventive law projects, counseling both private and public employers on how to achieve their management-employee relations goals while reducing legal risks.

Our attorneys regularly provide advice and other assistance on such issues as:

- sexual harassment, race discrimination, and other Title VII claims
- wrongful discharge claims
- employee handbooks
- development of policies and procedures on such issues as discipline, searches and seizures, and drug testing
- design and review of employee compensation programs and benefit plans
- advice on compliance with the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and other legislative measures affecting employers

They also assist companies by conducting investigations of alleged wrongdoing and determining the appropriate course of conduct after assessing the results. Also, our attorneys help clients and administer severance programs and evaluate employee terminations on an individual or large scale basis.

Jennings Strouss assist clients in employee-related aspects of significant corporate transactions, such as mergers, acquisitions, and reorganizations. Our attorneys also counsel clients in post-transaction integration issues, helping to combine compensation programs, policies, and benefits. They draft and help companies administer executive and employee compensation programs, including employment agreements, stock option and restricted stock plans, bonus and long-term incentive compensation programs, severance plans, employee trusts, and director compensation programs.

Our attorneys also have in-depth experience in helping clients deal with labor unions. They do everything from advising employers facing a union organization campaign to negotiating collective bargaining agreements and handling disputes and grievances through arbitration. Our attorneys also counsel clients regarding the avoidance of wage and hour problems stemming from minimum wage and overtime issues under the Fair Labor Standards Act (FLSA).

When problems arise, the firm is well equipped to handle administrative proceedings and litigation. Our attorneys assist clients in hearings before numerous administrative agencies such as the Equal Employment Opportunity Commission (EEOC), Occupational Safety and Health Administration (OSHA), National Labor Relations Board (NLRB), Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, Arizona Civil Rights Division, and the Arizona Department of Economic Security.



Sometimes employers have no choice but to defend themselves in litigation. In those circumstances, our attorneys bring extensive experience to bear in defending clients in all types of lawsuits brought in the state and federal courts (both trial and appellate). They also assist clients in resolving disputes through negotiation, mediation, arbitration, early neutral case assessment, and other alternative dispute resolution techniques.

Our labor and employment clientele is extensive and includes a broad range of businesses and organization in various industries, including utilities, hospitals, school districts, cities, counties, construction companies, manufacturing concerns, grocery store chains, food distributors, and others.

### **Representative Engagements**

- Represented a large hospital in an age discrimination lawsuit filed by a former manager
- Defended a large utility against claims of race discrimination in the employment application process
- Represented national hospitality and financial services employers in sex discrimination claims
- Defended an employer against claims that the employer's drug testing program violated the law
- Defended a title company in litigation alleging that the employer's handbook created an implied-in-fact contract
- Represented a county merit commission on procedural matters, administrative review work, and appeals
- Defended claim of disability discrimination against an employer alleging debilitating effects from exposure to second-hand smoke
- Represented employer of a large number of part-time employees in a claim alleging violations of Immigration Reform & Control Act
- Defended the constitutionality of Arizona's Farm Labor Law before the Supreme Court of the United States
- Represented a multi-national company before the U.S. Court of Appeals for the Ninth Circuit in labor litigation involving the exercise of management rights in making decisions relative to asset deployment nationwide
- Represented a major utility in its successful effort to prevent the unionization of its workforce over the course of several union organization campaigns
- Assisted various clients in the handling of OFCCP audits and development of affirmative action plans in aerospace, utility, and manufacturing business
- Represented a large construction company in Department of Labor's audit of the company's profit-sharing plan
- Defended employers in lawsuits, including their alleged breach of COBRA duties

### **Areas of Expertise**

#### **Executive and Employee Compensation**



Jennings Strouss provides clients with practical and timely advice in the dynamic and highly-regulated field of compensation and benefits relating to directors, managers, and employees. Our clients include employers of all sizes in a variety of industries, as well as plan fiduciaries.

Our experienced attorneys regularly assist in the creation and administration of a wide variety of compensation and benefits programs at all levels of an organization. They address issues arising under the Employee Retirement Income Security Act (ERISA) of 1974, the Internal Revenue Code, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, and other laws affecting employee benefits.

Our attorneys advise private and public companies on all aspects of executive compensation. They draft, negotiate, and administer executive employment, severance, change-in-control, and similar agreements, and assist with the creation of compensation plans, such as stock option, restricted stock, annual bonus, and long-term incentive compensation programs. Our attorneys have experience in creating compensation plans for directors or other managers of an enterprise, including annual and deferred compensation programs, charitable awards programs, and non-qualified director retirement programs. They also represent clients in the creation and administration of employee policies, such as employee handbooks, leave policies, compliance with employment laws, and anti-discrimination and harassment requirements.

### **Health and Welfare Plans**

Jennings Strouss counsels businesses concerning all types of health and welfare plans, including insured and self-insured medical plans, short- and long-term disability plans, Section 125 plans (cafeteria plans), flexible spending accounts, and health reimbursement arrangements. We also advise our clients on COBRA, ADA, FMLA, and general HIPAA compliance.

### **Fiduciary Counseling**

Jennings Strouss has substantial experience in counseling retirement plan sponsors, as well as trustees and other plan fiduciaries on ERISA's fiduciary and prohibited transaction rules. Our attorneys regularly advise clients regarding their duties in choosing and monitoring plan investments and assist with negotiating service provider agreements, investment management agreements, actuarial services agreements, investment performance monitoring agreements (hard and soft dollar), and custodial agreements.

### **ERISA Litigation and Government Proceedings**

Jennings Strouss defends employers and plan fiduciaries, including pension plan trustees, in a wide variety of litigation matters, such as benefit claims, breach of fiduciary duty claims, and actuarial disputes. We have appeared on behalf of our clients in Arizona Superior Court, U.S. District Court, and the U.S. Court of Appeals for the Ninth Circuit. The attorneys in the firm's litigation practice collaborate with our transactional attorneys to provide the most effective service possible in the evolving area of ERISA litigation. They also represent clients in proceedings before the Internal Revenue Service (IRS) and the U.S. Department of Labor, and in connection with governmental audits.

### **Corporate Transactions**



We counsel our clients on the employee-related aspects implicated by corporate mergers, acquisitions, and dispositions. We help clients identify options for policy and benefits program integration, elimination or redesign, and to recognize relevant assets and liabilities related to employee benefit plans in the corporate transaction context. Clients often need assistance in special employment or termination arrangements in conjunction with significant corporate transactions.

### Qualified Retirement Plans

Jennings Strouss advises employers on the design, drafting, administration, and termination of 401(k) plans, profit sharing plans, traditional pension plans, cash balance plans, and employee stock ownership plans, as well as the associated government reporting and participant disclosure obligations. We also have extensive experience in addressing the unique issues that arise in the context of collectively bargained, multi- and multiple employer plans. Our attorneys assist clients in amending their plans to stay current with legislative and regulatory developments and to satisfy changing business and human resource needs. They also represent clients in connection with the voluntary compliance programs sponsored by the IRS and the U.S. Department of Labor.

**What differentiates Jennings Strouss is the deep knowledge and understanding of our clients' businesses and industries.**

### Professionals



Acken, Julia S.  
Member



Alston, Gerald W.  
Special Counsel



Balitis, John J.  
Member



Egbert, John J.  
Chair, Labor and  
Employment



Frerichs, Scott F.  
Member



Kastner Jr., John J.  
Member



Leavitt, Jordan T.  
Associate



Leavitt, Lindsay G.  
Member



Leslie, Dawn  
Paralegal



Lieberman, Richard  
Chair, Corporate, Securities  
and Finance



Mason, Chris M.  
Member



Overholt, Keith F.  
Member



Peabody, Daniel J.F.  
Associate



Sestak Jr., John



Shill, Otto S., III  
Member



Smith, Richard C.  
Chair, Tax and ERISA



"Jack" G.  
Member

## Employment Law Times Blog

- [E-Verify Now With Possible Second Shutdown Looming](#)  
Source: Employment Law TimesPublished on 2019-02-13
- [New Form I-9 Now Effective](#)  
Source: Employment Law TimesPublished on 2017-09-21
- [ADA Plaintiff's Fernando Gastelum and Theresa Brooke Sue Hotels Over Online Reservation Policies](#)  
Source: Employment Law TimesPublished on 2017-08-04

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