



# Labor, Employment and Benefits



## OVERVIEW

Keeping abreast of the ever-changing laws regarding labor, employment and benefits can present challenges for any employer. Our team of attorneys shares the commitment of following changes to the laws, regulation updates, and trends that affect employers. This dedication allows our attorneys to efficiently identify, address and resolve our clients' employment-related challenges.

### Labor and Employment

Both private and public sector clients depend on our representation in a wide variety of employment law litigation matters in federal and state courts and administrative bodies, as well as in proceedings before the courts of the Navajo Nation. Such cases include employment discrimination claims under federal statutes like Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, as well as claims involving the New Mexico Human Rights Act, workers' compensation laws, breaches of employment contract, and collateral torts such as retaliatory discharge.

Many clients come to Modrall Sperling to become or remain in compliance with state, federal and tribal law. We assist our clients in dealing with employee issues as they arise, in the hope that disputes and litigation may be avoided if possible. Our lawyers have conducted extensive training for clients in anti-discrimination and harassment, and on compliance with wage and hour laws. We assist in preparing employee handbooks and in drafting employment policies that comply with federal, state and tribal law. We also counsel our clients through administrative audits, investigations and informal inquiries.

### Benefits

We represent our clients with regard to designing, implementing, and maintaining benefit plans and trusts; drafting necessary communications, documentation and procedures; obtaining favorable determination letters; assisting with audits, ERISA compliance and IRS compliance; advising on compliance with reporting, disclosure obligations and claims handling; and counseling on executive compensation and employment contracts.

Our clients include a wide variety of taxpayers, both individual and large and small businesses, professional and corporate, third-party administrators, non-profit and for profit entities, and governmental and tribal entities. We work in conjunction with a wide variety of professional contacts and associations, including actuarial services, accounting services, third party administrators, trust departments, and investment advisers, to broaden the range of solutions we offer.

The firm also possesses extensive experience in ERISA litigation, having handled numerous cases involving both pension benefits and welfare benefits, including cases for disability and medical insurers, self-insured plans and third-party administrators.



## EXPERIENCE

### Representative Employment Experience

- *Garcia v. Albuquerque Public Schools*: The firm obtained summary judgment in favor of the employer on a matter involving a former employee's claims of Title VII discrimination, retaliation, and hostile work environment discrimination.
- *Andrea Felts-Pargas, et al. v. Albuquerque Public Schools*: Three female administrators filed an employment action against Albuquerque Public Schools alleging gender discrimination following their transfers to different administrative positions in the district, which occurred as part of a District-wide reorganization of administrators. The female administrators alleged that the reorganization disproportionately disadvantaged female administrators generally and the three plaintiffs specifically. Plaintiffs alleged damages associated with lost wages and lost retirement income. The Court granted summary judgment in APS' favor, finding that the Plaintiffs had failed to show that their reassignment was related to gender. The Court found that one Plaintiff was moved because her job was eliminated (the campus was closed) and that the other two were reassigned due to performance issues.
- *Ethridge v. Brooks and Albuquerque Public Schools*: An administrator filed breach of contract, equal protection, gender discrimination and retaliation claims against Albuquerque Public Schools, alleging that the superintendent had disparaged her in various email communications, which were leaked to the press and widely reported on in local papers. Modrall Sperling filed a qualified immunity motion on behalf of the individual defendant, and won. The Court's opinion makes it clear that many of the claims filed against APS (as opposed to the individual defendant) fail, and Plaintiff agreed to voluntarily dismiss the remaining claims.
- *Equal Employment Opportunity Commission v. San Juan Coal Company*: The firm obtained summary judgment in favor of its client in a sex discrimination case in which the plaintiff alleged her employer discriminated against her and other women by failing to provide training opportunities which would have enabled her to advance within the company.
- *Equal Employment Opportunity Commission v. Fisher Sand & Gravel*: Summary judgment in favor of the employer on employee claims of race discrimination, defamation and negligence in administration of drug tests.
- *Simmons v. Walgreen Co.*: The court granted the employer's motions to dismiss and for summary judgment as to plaintiff's claims for age and disability discrimination, and numerous state law tort claims, including wrongful termination, defamation and intentional infliction of emotional distress.
- *Jones v. BHP Billiton*: In a proceeding under the Navajo Preference in Employment Act, the Navajo Labor Commission upheld the employer's decision to terminate the employee for violation of various company policies, rejecting the employee's claim that the decision was motivated by bias against his practice of his Native religious beliefs.
- *England v. Albuquerque Public Schools*: The court granted the defendant's motion for summary judgment as to plaintiff's claims for failure to provide a reasonable accommodation under the Americans with Disabilities Act, and retaliation under the New Mexico Human Rights Act.

### Representative Benefits Experience

Working with both exempt and non-profit employers as well as non-exempt business corporations, sole proprietors, LLCs, and other entities, we design, draft and help implement qualified and non-qualified retirement plans and welfare benefit plans.

We also assist clients in connection with:

- IRS and DOL audits
- Claims by participants



- Correction of plan and operational errors under the IRS and DOL voluntary correction programs
- Most types of employee benefits including:
  - Qualified plans, such as 401(k) plans, 403(b) plans, profit-sharing plans, ESOPs, and defined benefit plans
  - Welfare Plans including health reimbursement plans, fringe benefit plans, cafeteria plans, dependent care reimbursement plans, and health flexible spending accounts
  - Non-qualified plans, such as executive compensation, 409A deferred compensation plans, and 457 plans

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