



Anna M. Dailey

Of Counsel
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Anna has strong and broad experience in both traditional labor matters and a variety of employment matters facing companies. She listens to her clients' goals and quickly becomes a trusted partner who can solve problems with workable and cost-effective solutions. A variety of industries including energy, manufacturing, and health care have a long history of turning to Anna to help them protect their assets and reputation while navigating through challenges and managing risk.

Steering clients through a multitude of issues is her greatest priority, whether advising management during union organizing campaigns; providing supervisory training; handling or advising on collective bargaining negotiations; and if needed, assistance in preparing for strikes and litigation associated with strikes. She has negotiated contracts with the UMWA, USW, Teamsters, Operating Engineers, UFCWU, and the SEIU.

Knowing each company has different objectives and problem solving processes, Anna adapts her strategy to fit the circumstances. With a unique mix of business savvy and legal acumen, she is capable of stepping into almost any human resource issue at any point to guide clients while maintaining the requisite level of discretion. In addition to traditional labor law, she advises clients on a number of state and federal employment laws, including non-competes, employment agreements, conducting internal investigations, providing training, and avoiding wrongful discharge and discrimination claims. Anna also has represented clients in the coal industry in whistleblower claims relating to safety violations under MSHA.

When litigation becomes necessary, Anna brings a wealth of experience in state and federal courts, where she has tried a variety of labor cases before the NLRB and employment cases to juries. She has successfully defended clients in cases of alleged discrimination and non-compete matters, working with her clients to provide efficient counsel that meets their goals. She has also won two multi-million dollar jury verdicts against unions for business interruptions and violent picketing activity.

Anna's understanding of management issues and business drivers led to her being elected for six years to Dinsmore's Board of Directors and to serve as a member of its Executive Committee. She was also appointed by the firm's managing partner to lead its Charleston, W.V. office for several years. Given her experience on various Boards of Directors, Anna has taken a number of Board of Directors Programs and recently became ESG Certified through Diligent's Institute for Climate Leadership.

Anna was appointed by West Virginia's governor in 2020 to serve as one of five members of the West Virginia Industrial Council, which is charged with overseeing the worker's compensation insurance market in the state. She was elected Chair of the Industrial Council in 2022.

Services

- Labor
- Employment
- Employment Discrimination Litigation
- Labor Arbitrations
- Collective Bargaining Negotiations
- NLRB Issues
- Strike Preparation/Litigation
- Wrongful Discharge
- Workplace Safety
- Audits, Counseling & Training
- Natural Resources Industry
- Health Care Industry

Education

- West Virginia University College of Law (J.D., 1979)
- Vanderbilt University (B.A., 1975)

Bar Admissions

- West Virginia
- District of Columbia

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Northern District of West Virginia
- U.S. District Court for the Southern District of West Virginia
- U.S. District Court for the Western District of Pennsylvania

Affiliations/Memberships

- West Virginia Chamber of Commerce
 - Executive Committee (4 years)
 - Board of Directors (7 years)
 - Civil Justice Committee, chair (2019-2023)
 - Human Resources Committee, past chair (2016-2019)
- Women for Economic and Leadership Development (WELD), National Board of Directors (2020- present)
 - Nominated Chair of Governance Committee (2022)
 - Executive Committee (2022)
- Leadership West Virginia, past Board of Directors, past Board Chair
- Defense Trial Counsel of West Virginia, Labor & Employment Committee, first chair
- Eastern Mineral Law Foundation, former trustee
- Kanawha County Parks Commission
 - Past commissioner (12 years)
 - Past Parks Commission president (6 years)

Distinctions

- ESG Certification, Diligent Institute's Climate Leadership
- Who's Who in West Virginia Business Award - *WV State Journal* (2013)
- *Chambers USA*®: *America's Leading Lawyers for Business*, Labor & Employment
- West Virginia *Super Lawyers*®
 - Employment & Labor (2021)
- Peer Review Rated AV in *Martindale-Hubbell*, Top Rated Lawyer in Health Care (2016)
- Dinsmore Mentor of the Year (2013)
- *Best Lawyers*®
 - Lawyer of the Year in Natural Resources Law in Charleston (2023)
 - "Lawyer of the Year" in Charleston for Labor Law - Management (2015, 2017)
 - "Lawyer of the Year" In Charleston for Employment Law (2016)
 - "Lawyer of the Year" in Charleston for Employment Law - Management (2018)
 - Employment Law - Management, Labor Law - Management, Litigation - Labor and Employment, Mining and Natural Resource Law (2021-2024)

Certifications

- FMCS – Five Day Becoming a Labor Arbitrator Course (2021)
- Diligent Institute's Climate Leadership and (ESG) Certification (2022)

Experience

Obtained Summary Judgment in Disability Discrimination Case

We represented a coal company in federal court on multiple employment discrimination claims in a failure to hire case following the company's asset acquisition of an operating mine. We obtained summary judgment a month before the scheduled jury trial. The court ruled for defendant for two reasons: 1) Even if plaintiff could prove a prima facie case, he did not produce evidence to rebut the employer's legitimate business reasons for its decision; and 2) The West Virginia Human Rights Act does not require an employer to provide, as an accommodation, the less physically demanding communications job the plaintiff sought when the buyer filled the job with the same person who was working in that communications job immediately before the sale took place.

Received Favorable Ruling for Client During Age Discrimination Trial

We represented our clients, a coal company and two of its management employees, in a case involving age and disability discrimination, hostile work environment and two other counts before a southern West Virginia jury in Logan County. Before the case went to trial, we successfully obtained dismissal for the individual defendants and, through summary judgment, whittled the multi-count complaint down to three causes of action: age and disability discrimination and a hostile work environment. At the closing of the plaintiff's case in chief, we successfully argued for judgment as a matter of law on the disability and hostile work environment claims. By cross-examining the plaintiff with the admissions he made during his videotaped deposition, we then showed the company did not take into account the plaintiff's age when it terminated him for sleeping while underground. At the conclusion of the three day trial, we obtained a full defense verdict, with the jury finding that the company did not discriminate against the plaintiff due to his age.

Rockwell Mining LLC/Glancy Mine – 9-CA-216006 (2017-2018)

Represented coal company in UMWA Election & Objections to Conduct Affecting the Election.

Successfully Defended Client in Age & Disability Discrimination Trial (2018)

We successfully defended a coal company in Logan County, WV Circuit Court, obtaining jury verdict in our favor when plaintiff filed suit for age and disability discrimination after he was discharged for falling asleep underground.

Successfully Negotiated Multiple Collective Bargaining Agreements (2017-2018)

5 with SEIU; 1 with Teamsters and 1 with USW.

Represented a Company in NLRB Charges Related to Collective Bargaining Negotiations (2017)

We successfully represented a Caterpillar dealer in NLRB charge following last best final offer and implementation in collective bargaining with the Operating Engineers.

Successfully Defended a Client During an Age Discrimination Case (2017)

We successfully represented a company and its president through an age discrimination-in-hiring case. The plaintiff was part of a predecessor's management team and younger than the candidate the company ultimately selected. Plaintiff had also executed a severance agreement with the predecessor employer concerning the sale to the defendants. The company took the position the case was appropriate for Rule 11 sanctions. On the eve of trial the plaintiff asked to settle by dismissing case if defendants would not sue the plaintiff's lawyers under Rule 11.

Acquisition of Several Unionized Health Care Facilities & Follow on Bargaining (2016)

Over a course of 3 years, provided labor due diligence and advice in the acquisition of several unionized health care facilities and negotiated first time collective bargaining agreements with the SEIU, the USW and the Teamsters.

Collective Bargaining Negotiations in Construction Industry (2016)

Assisted various construction companies in contract negotiations with USW Painters Union and Bricklayers Union.

Acquisition of surface mine, deep mine, coal reserves, coal leases and mining permits

We served as deal counsel for a coal producing company in its acquisition of a deep mine and substantial coal reserves, together with a surface mine, coal and surface leases, and mining permits, for a total value of approximately \$25 million. The transaction included a unique financing structure involving the acquisition of certain reserves and a leasing arrangement with third party landholding companies, as well as important labor considerations resulting from certain obligations of the Seller to the UMWA. We helped negotiate and drafted all of the documents necessary to facilitate the deal, and handled all aspects of the due diligence review including labor issues. We counseled the client through the successful closing and execution of the purchase, which will allow the client to expand its mining operations in the Appalachian coal fields.

Acquisition of Coal Mining Operation Assets

We served as transaction counsel to Coronado Coal II LLC in an approximately \$174 million transaction involving the acquisition of the coal mining operation assets of Cliffs Logan County Coal, LLC from Cliffs Natural Resources, Inc. The assets involved in the transaction were active underground and surface mines with metallurgical and thermal reserves, preparation and loading facilities and related infrastructure. We advised the client at each step of the transaction, including the initial offer and proposed letter of intent, due diligence, negotiating the purchase agreement, transition services agreement, permit operating agreement and certain third party agreements and efficiently executing the closing of the sale. The transaction, was the firm's fourth coal asset acquisition for this client and the entities associated with it since 2012.

Successfully Defended a Publicly Held Client Against a Claim of Disability Discrimination (2015)

Successfully defended a company in charge of disability discrimination following the discharge of an HIV-positive employee due to performance issues unrelated to his illness.

Obtained a Favorable Resolution for a Law Firm Client Accused of Sex Discrimination (2013)

We obtained the favorable and confidential resolution of case for a client where the plaintiff claimed sex discrimination as the reason she was not made a partner in the law firm.

Secured Favorable Resolution for a Publicly Held Client in Hazing Case (2013)

We obtained the favorable and confidential resolution of a case for a publicly held client where two employees claimed constructive discharge following unfortunate horseplay and extreme hazing which led to embarrassing allegations and two constructive discharges.

Multi-State Utility Company (2007-2011)

Represented company in West Virginia employment law cases, unfair labor practice charges and grievance arbitration hearings.

Captive Audience Legislation in West Virginia (2010)

Testified on behalf of West Virginia Chamber of Commerce regarding Captive Audience Legislation in West Virginia and appeared on television program "Decision Makers" to debate issue against UMWA official and Delegate who proposed bill.

Eagle Creek Mining, LLC - 9-RC-18325 (2010)

Represented company in R-hearing over under-inclusive unit issues, including filing request for review to NLRB. Provided legal advice during campaign on NLRA 8(c) communications. Union withdrew petition on eve of election.

Ellis v. West Virginia American Water Company, Inc. (Kanawha County, WV 05-C-749) (2010)

Successful defense in suit by HR manager alleging sex discrimination by company where HR manager was discharged for inappropriate e-mail communications. Obtained summary judgment on all issues on case of trial.

Representation of Energy Industry Companies (2010)

Multi-National Package Delivery Business (DHL Express), 9-CB-11361

Represented in unfair labor practice charges against Teamster, Local 505 in violent strike situation.

Multi-State Utility Company

Represented company in West Virginia employment law cases, unfair labor practice charges and grievance arbitration hearings.

District 17, UMWA v. Marrowbone Development Company, 232 F.3d 383 (4th Cir. 2000)

Defended company in union's effort to overturn arbitration decision. Case eventually remanded to arbitrator in order to take additional evidence.

Flexsys America, L.P. v. Local Union 12610, 88 F.Supp.2d 600 (S.D. W.Va. 2000)

After hearing, arbitrator held ex parte conversation with employer advocate requesting company re-open hearing to investigate whether discharged employee's supervisor was "gay" which would influence arbitrator's decision. Obtained judgment to set aside arbitrator's decision due to discriminatory bias.

Superior Pocahontas Coal Company v. Island Creek Coal Company, 840 F.2d 11 (4th Cir. 1988)

Defended company in claim for pension plan withdrawal liability claim incurred by other company when it ceased operations, where adhesion contract claimed.

Represented a Hospital Following Collective Bargaining (2010)

We successfully defended a hospital in NLRB charge following the implementation of its last best final offer in collective bargaining with the USW.

9-RC-17844 - Rockspring Development, 353 NLRB No. 105 (2004-2009)

UMWA election where initial tally of ballots was 110 for and 103 against union representation with 9 outcome determinative challenged ballots in 2004. Represented clients in hearings on challenge ballots and appeals,

including challenges on supervisory and managerial status of challenged voters. Ultimately, all ballots were opened with final election results in 2009 of 110 for and 112 against union representation.

EEOC v. Brooks Run Mining, LLC, (S.D.W.V. 5:08-CV-71) (2009)

Defended client in sex discrimination case brought by the EEOC on behalf of female security guards employed by a contractor and assigned to work at our client's facilities. Case was resolved favorably for the client after we filed a dispositive motion showing significant deficiencies in the EEOC's proof against our client.

Successfully Defended a Company Following UMWA Charges to NCRB (2009)

We successfully defended a publicly held company on two different charges filed by the UMWA: 1) alleging violation of contract in implementing drug testing policy and 2) violation of contract in using student engineers to learn production processes. Both cases resulted in withdrawal of charges by UMWA.

27-CA-20837 – Foundation Coal West, Inc. (2008)

Successfully represented company in subsequent case regarding failure to promote union organizer and settled new allegations regarding additional distribution of literature issues.

6-RC-12619 – Simonton Windows (2008)

Represented employer in R proceedings on unit under-inclusive issues and succeeded in having union withdraw its petition. Also provided labor law training to supervisors.

9-CA-44064 – Magnum Coal Company and Apogee Coal Company (2008)

Successfully defended company in unilateral change charge on implementing drug testing program after company's discussions with union and it's clean unmistakable waiver.

9-RC-18206 – Carmeuse Lime LLC, (2008)

Represented employer in R proceedings and gave legal advice on lawful Section 8(c) communications during election campaign. Union won election 76-71.

Foundation Coal West, Inc., 352 NLRB No. 22 - 27-CA-20202; 27-CA-20295 (2007-2008)

Represented company in NLRB solicitation and distribution cases incident to union organizing drive and issues surrounding distribution of literature in a mixed-use venue.

Hildebrand v. Ashland v. Chemtreat, Inc. - S.D.W.V. 2:07-CV-585 (2008)

Represented a publicly held company in non-compete litigation. Reached beneficial compromise following testimony at injunction hearing.

9-CA-43629 - Carmeuse Lime LLC, (2007)

Successfully defended company in discharge case involving alleged union organizer discharged for repeated safety violations.

Kingston Resources - 9-RC-18041; 9-RC-18044 (2004-2005)

Represented company in successive R petitions filed by union and then withdrawn before R-hearing could be held. Provided labor law training to supervisors.

Lone Mountain Processing, Inc. - 11-RC-6591 (2005)

Represented company in election proceedings and provided both labor law training and legal advice during campaign on lawful NLRA 8(c) communications. Union withdrew petition on eve of election.

Multi-National Package Delivery Business (DHL Express), 9-CB-11361 (2005)

Represented in unfair labor practice charges against Teamster, Local 505 in violent strike situation.

AEP Ohio Coal (2003)

Represented company in R-hearings, ULP charges and advice on lawful campaign communications. Company won R-hearing and ULP charges. Vote in union election was 110 for company and 49 for union with 29 ballots challenged by union.

Holland v. Kitchekan Fuel Corp., 137 F.Supp.2d, 681 (2001)

Pension plan liability case

Pittston Coal Group, Inc., 334 NLRB 690 (2001)

Successfully defended company in ULP case regarding failure to provide information which was outside control of employer and where employer made good faith effort to obtain. Employer not obligated as part of good faith efforts to end contractual relationship over negative reply of a contractor in order to force its cooperation.

District 17, UMWA v. Marrowbone Development Company, 232 F.3d 383 (4th Cir. 2000)

Defended company in union's effort to overturn arbitration decision. Case eventually remanded to arbitrator in order to take additional evidence.

Eastern Associated Coal Corp. v. United Mine Workers of America, District 17, et al., 531 U.S. 57 (2000)

U.S. Supreme Court held that public policy considerations do not require courts to refuse to enforce an arbitration award ordering an employer to reinstate an employee truck driver even though he twice tested positive for drug use. Worked with now-Chief Justice John Roberts, who was retained to do oral argument to the Supreme Court.

Flexsys America, L.P. v. Local Union 12610, 88 F.Supp.2d 600 (S.D. W.Va. 2000)

After hearing, arbitrator held ex parte conversation with employer advocate requesting company re-open hearing to investigate whether discharged employee's supervisor was "gay" which would influence arbitrator's decision. Obtained judgement to set aside arbitrator's decision due to discriminatory bias.

Pocahontas Coal Company v. Island Creek, et al., 840 F.2d 11 (4th Cir. 1988)

Suit to recover pension plan withdrawal liability incurred to UMWA

Marrowbone Development Company v. UMWA, (S.D.W.V. 1987)

Represented company in Section 303 damage case in federal court regarding union violence in secondary boycott where union defense was single employer claims. Won \$6.8 million in damages.

Elk Run v. UMWA – (S.D.W.V. 1986)

Represented company in Section 303 damage case in federal court regarding union violence. Won \$1.8 million in damages.

District 29, UMWA v. Royal Coal Company, 786 F.2d 588 (4Cir. 1985)

Case involved company's obligation to provide health benefits to retired and disabled miners after expiration of 1981 Wage Agreement when it ceased all active mining and did not execute 1984 Wage Agreement.

Publications

March 16, 2020

Families First Coronavirus Response Act: What Businesses & Employers Need to Know

March 15, 2020

Just Breaking: A Preliminary Report for Employers on the Coronavirus House Bill

What You Should Know About the Families First Coronavirus Response Act

March 10, 2020

Helping Human Resources Managers Prepare for Coronavirus Pandemic