



Kathryn A. Quesenberry

Partner

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At a time when fewer than 5% of all cases go to trial, Kathy has tried nearly 20 cases to jury verdict, most recently three discrimination/harassment/retaliation cases in Jefferson County (Louisville), Kentucky, each of which resulted in defense verdicts on all claims. She has successfully represented clients all around Kentucky, including jury trials in Jefferson, Fayette, Montgomery, Barren, Simpson and other Kentucky counties, as well as in federal courts in the Eastern and Western districts of Kentucky.

On behalf of employers large and small, she defends employment lawsuits that include claims of wrongful discharge, discrimination, hostile work environment and harassment, wage and hour violations, breach of contract, disability and Family and Medical Leave Act (FMLA). In addition to her extensive trial record, she has successfully argued cases on appeal before the Sixth Circuit Court of Appeals, the Kentucky Supreme Court and the Kentucky Court of Appeals. She regularly provides advice and counsel to employers on personnel policies and procedures, employee discipline, and harassment investigations. Kathy also develops and presents training for managers and HR professionals on hiring, firing, documenting performance issues, FMLA, disability accommodations, wage and hour laws, and a variety of employment-related topics. Her clients range from national and international corporations to smaller family-owned businesses.

Services

- Employment
- Labor
- Workplace Safety
- Employment Discrimination Litigation

- Wage/Hour Law
- Wrongful Discharge
- Audits, Counseling & Training
- Class Action

Education

- Brandeis School of Law at the University of Louisville (J.D., *magna cum laude*, 1990)
- Vanderbilt University (B.A., 1983)

Bar Admissions

- Kentucky

Court Admissions

- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Western District of Kentucky
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Southern District of Indiana

Affiliations/Memberships

- Kentucky Bar Association, Labor and Employment Section, past chair
- Louisville Bar Association
- ALFA International
 - Board of Directors, past member
 - Labor and Employment Practice Group Steering Committee, past member
- Louisville Metro Government Ethics Commission
 - Member (2003 - 2007)
 - Chair (2007 - 2010)
- Louisville Police Administration Advisory Commission, member and chair (1994 - 1999)
- Sacred Heart Schools Board of Trustees (2012 - 2018)
 - Internal Affairs Committee (2012 - 2017)
 - External Affairs Committee (2017 - 2018)
 - Diversity Committee (2018 - present)
- The Speed Art Museum Human Resources Committee (2016 - 2018)

Distinctions

- Peer Review Rated AV in *Martindale-Hubbell*
- *Best Lawyers® Labor and Employment Law, Management and Litigation*

- "Lawyer of the Year" in Louisville for Litigation - Labor and Employment (2017)

Kentucky *Super Lawyers*®

- Labor and Employment
- Top 25 female attorney

Chambers USA®: *America's Leading Lawyers for Business*, Labor & Employment "Top Lawyers" by *Louisville Magazine* (2009 - present) Outstanding Volunteer for Human Resources by the American Red Cross, Louisville Area Chapter (2002) Mary Rudd Volunteer Service Award by the Center for Women and Families (1996)

Experience

Successful Dismissal of Widely Debated Issue: Sexual Orientation as a Protected Class

We represented a client that operates correctional facilities, detention centers and workforce development sites to defend a lawsuit brought by a former employee alleging race discrimination, sex discrimination, retaliation and breach of contract. The former employee identified as gay. Before costly discovery was conducted, we moved to dismiss all claims except one. The United States District Court of the Western District of Kentucky granted our motion to dismiss, significantly limiting our client's exposure.

The dismissal of the plaintiff's sex discrimination claim was particularly important because Title VII and the Kentucky Civil Rights Act (KCRA) protections related to sexual orientation have been widely debated in recent years. The United States District Court of the Western District of Kentucky agreed with our arguments and held that sexual orientation is not a prohibited basis under Title VII and the KCRA.

Successfully Defended a Client Against Claims of Age and Sex Discrimination

In 2017, we successfully defended our client, a multi-national corporation, against claims of age and sex discrimination under Title VII, the Age Discrimination in Employment Act (ADEA), and Kentucky's Civil Rights Act (KRS Ch. 344). The two plaintiffs were former employees of our client's manufacturing plant in eastern Kentucky. Due to a plantwide reduction-in-force (RIF), the plaintiffs and other employees were laid off pursuant to the collective bargaining agreement between our client and the employees' union. The pair sued, claiming their layoffs were not based on seniority, but rather were based on their gender and age.

We took both plaintiffs' depositions, defended the deposition of our client's company representative, engaged in extensive discovery, and filed a motion of summary judgement, which was granted in our client's favor on the eve of a jury trial. The case was dismissed as to all claims with prejudice. In granting summary judgement, the court held that the plaintiffs had not identified facts that established a *prima facie* case for employment discrimination under the heightened RIF standard, which requires a plaintiff to provide additional direct, circumstantial or statistical evidence indicating that the employer had "singled out" the plaintiff for discharge for impermissible reasons. Further, the court held even if plaintiffs were able to establish a *prima facie* case against our client, they failed to provide evidence our client's reasons for the plaintiffs' layoffs were pretextual.

Allegations of age discrimination against an international media company

In July 2014, we won a jury trial on behalf of an international media company against an allegation of age discrimination and intentional infliction of emotional distress. Our client had terminated the plaintiff, a 61-year old executive who had been with the company nearly 25 years, during a reduction-in-force. The plaintiff alleged that the company had targeted him for termination because of his age and had “covered up” the discriminatory reasons for his termination. The plaintiff also asserted that a disproportionate number of older workers had been let go in the years before the plaintiff’s termination, pointing to human resources documents and e-mails that discussed employee ages in the context of reductions-in-force. Lastly, the plaintiff alleged that the company failed to offer him a job in the reorganized company. The plaintiff sought up to \$1.4 million in damages.

Prior to trial, we successfully moved the court to dismiss plaintiff’s intentional infliction of emotional distress claim, arguing that pursuant to Kentucky law the claim was precluded by his age discrimination claim. We also successfully limited the evidence plaintiff sought to use at trial, including evidence of the company’s overall financial state as described in public filings.

During the eight-day trial in Jefferson Circuit Court, we established the company’s non-discriminatory reason for plaintiff’s termination: his highly paid job position was eliminated for business reasons due to a corporate restructuring. The jury of seven men and five women determined that age was not a “substantial motivating factor” in terminating the executive or in refusing to offer him another job position, finding for the defendant on both counts of age discrimination. The plaintiff did not appeal the jury’s verdict and the case is now final.

Allegations of Age Discrimination and Hostile Work Environment

We defended a convenience store chain against allegations of age discrimination, hostile work environment and discriminatory discharge from a former employee. The plaintiff, an 11-year employee who was 57 years old, was terminated after a third violation of store policy prohibiting employees from purchasing lottery tickets while on the clock. The plaintiff claimed that the tickets were purchased for her sister, a customer who was undergoing chemotherapy and was unable to visit the store. The plaintiff also asserted that she and other employees had been subjected to age-hostile comments from management-level officials and, upon termination, filed suit alleging that her former employer had violated the Kentucky Civil Rights Act, KRS Ch. 344, by subjecting her to an age-hostile work environment and to an age-discriminatory discharge. She also asserted claims for failure to pay accrued vacation under Kentucky law, KRS Ch. 337, intentional infliction of emotional distress and public policy wrongful discharge. Ultimately the plaintiff’s wage and hour, emotional distress and public policy wrongful discharge claims were dismissed, and the case went to trial on the plaintiff’s civil rights claims.

Prior to trial, we utilized targeted discovery and motions *in limine* to limit the plaintiff’s damages, including a motion to exclude evidence of the plaintiff’s lost wages and a motion to strike her claim for back pay. The plaintiff admitted that she had only applied for one job in the three years since her termination, and that she had stopped looking for work after applying for Social Security disability benefits. The Court ruled that the plaintiff had not used reasonable efforts to find alternate employment to limit her damages, and that the receipt of Social Security benefits barred her claim for lost wages.

During a four-day jury trial in Jefferson Circuit Court, we discredited a former manager who testified to having also been subject to age discrimination. We also discredited the plaintiff’s story of purchasing the lottery ticket for her sister, after the sister testified that she was not undergoing chemotherapy treatments at the time the ticket was

purchased, and that she had, in fact, stopped playing the lottery. The 12-member jury found in favor of the defendant of the plaintiff's claims of an age-hostile work environment and an age-discriminatory discharge. The plaintiff's deadline to appeal passed, and the defense verdict became final.

Darrell Sams and Diana Cheek v. Wal-Mart

Wal-Mart terminated long-time department managers Darrell Sams, age 48, and Diana Cheek, age 41, from its London, Kentucky store for taking frequent and excessive breaks in violation of Wal-Mart's Break and Meal Period policy. Both Sams and Cheek were aware that Wal-Mart's policy allowed only two paid 15-minute breaks per shift and that additional and extended breaks violated the policy. Sams and Cheek claimed that Wal-Mart and their supervisors defamed them by stating both on their Exit Interviews and during their unemployment compensation hearings that they were terminated for excessive breaks resulting in "theft of company time." Their Complaint also asserted claims of age discrimination and intentional infliction of emotional distress.

The trial court dismissed Plaintiffs' claims on summary judgment. Sams and Cheek appealed only the dismissal of their defamation claims. Agreeing with the trial court, the Kentucky Court of Appeals held that the alleged statements were true and, therefore, not defamatory. Moreover, the Court held that the statements were privileged as their intra-company communications and part of quasi-judicial proceedings. Accordingly, the Kentucky Court of Appeals affirmed the trial court's summary judgment and the case was dismissed in its entirety.

Defense Verdict in Race Hostile Work Environment Claim

The plaintiff was an 11-year employee of a manufacturing company who was terminated for violation of the Company's attendance policy after he failed to submit required documentation. The plaintiff filed suit under Kentucky's Civil Rights Act, KRS Chapter 344, alleging that he was terminated due to his race and for complaining about race discrimination, as well as forced to work in unsafe working conditions and subjected to disparate disciplinary action. He also alleged a hostile work environment claim, relying on what he claimed to be widespread racial graffiti throughout the plant and restrooms, as well as the presence of "nooses" on two different occasions.

Following discovery, the company filed a motion for summary judgment on plaintiff's claims in their entirety. The Court dismissed the plaintiff's claim that he had been terminated due to his race or in retaliation for complaining about race discrimination inasmuch as he was unable to rebut the employer's legitimate business reason for his termination. In addition, the Court dismissed the plaintiff's claims that he and other minority employees had been forced to work in unsafe working conditions as barred due to his failure to pursue his administrative remedy and because he lacked evidence that minority employees were singled out.

In February 2012, the case was tried in Jefferson Circuit Court on the plaintiff's remaining claim that he was subjected to a racially hostile work environment. The Company presented proof that nearly 20% of its workforce is African-American and that almost half of those employees had worked for the Company for over 15 years. The manufacturer also put on evidence of its zero tolerance for harassment of any kind. Following a two-day trial which included testimony of seven witnesses, the 12-person jury found unanimously in favor of the company on the plaintiff's claim that he had been subjected to a hostile work environment due to the presence of rope nooses and racial graffiti. After the trial court denied a motion for a new trial, plaintiff appealed the jury verdict to the Kentucky Court of Appeals, but voluntarily dismissed his appeal before filing his brief, concluding this matter.

Developed Entire Workforce Governance Framework for New Company Above and Beyond

The success of any business is directly tied to its employees. From their tangible contributions to the company to the mindset and culture they instill, a good workforce can be the tool that takes a company to the next level.

Tri-Arrows Aluminum embraces a “gold standard” approach to doing business, challenging its employees to go above the call of duty and push the company to new heights while also maintaining an atmosphere of conducting business the “right way.” Formerly a subsidiary of BP Company North America that was known as ARCO Aluminum, Tri-Arrows turned to Dinsmore for counsel when it became clear it would soon be an independent company. Recognizing the opportunity to start anew, Tri-Arrows enlisted Dinsmore to begin drafting new policies and procedures, including a new payroll structure and performance review system, as well as providing guidance on which employment laws the new company was, or was not, required to comply with in its new form with a smaller workforce. Integrating ourselves in the culture of the new company, we drafted a new employee handbook, modifying the legacy policies to fit the new regime, but also constructing a unique framework that reflected the objectives of Tri-Arrows.

Once the basic framework for their employment procedures was established, we continued to offer guidance on business ethics, including conducting on-site Code of Ethics training for employees. Understanding the potential for concern caused by Tri-Arrows unique joint venture agreement, in which they have shared manufacturing facilities with a competitor for over a quarter of a century, our team worked with Tri-Arrows’ employees to address issues of confidentiality and the handling of business-sensitive information, arming the employees with the knowledge they needed to uphold the company’s mission without compromising proprietary information.

As Tri-Arrows continues to grow, its employment needs grow as well. Our attorneys have teamed with the company to provide a variety of services, including reviewing compensation plans, detailing job descriptions and employee classifications, and formally instituting a performance evaluation process. Our detail-oriented approach to employment counseling has fallen in step with Tri-Arrows’ professional culture, and we’ve helped this newly-formed company build a solid foundation that will enable it to reach the next level.

Employment Litigation, Counsel for a Nationally-Renowned Hospital

The unique settings of hospitals and medical care centers present a number of employment challenges, from industry-specific statutes and regulations to general employment matters, such as discrimination. One of the most renowned hospital systems in the country turns to Dinsmore to advise it through their employment matters, ensuring that their business runs efficiently and continues to provide quality health care. We counsel the client through a wide variety of employment matters, including defense of claims of discrimination, harassment and wrongful termination. We also routinely advise the client on statutory causes of action, specifically those related to whistleblower protection under the Kentucky Nurse Practice Act, as well as handling administrative matters with the EEOC and the Kentucky Commission on Human Rights. We have also worked with the client during Family and Medical Leave Act (FMLA) litigation, which has included working with third-party contractors to find resolutions. As a medical provider for the public, our client is obligated to provide treatment without regard to disability or national or ethnic origin, giving rise to the need to provide public accommodation such as American

sign language (ASL) and language interpreters. Given that our client's facility is open 24 hours a day and work shifts differ from those at a "typical" business, we also have advised the client on a number of wage/hour issues, which has included drafting policies related to overtime compensation, employee breaks and clock-in procedures. Ultimately, we work with the client proactively to provide advice and counseling on employment issues, helping to avoid problems before they arise. But, we also stand ready to defend lawsuits, complaints, and administrative proceedings when necessary.

Linda H. Williams v. Wal-Mart Stores, Inc.

Plaintiff Linda Williams was terminated at the age of 56 after nine years of employment when a store investigation showed that she had consumed bottles of water without first paying for them. Her claims of disability discrimination and retaliation were dismissed on summary judgment. After trial in Barren Circuit Court, the jury found that Williams had been subjected to age discrimination and awarded lost past and future wages of \$97,237, emotional distress damages of \$192,000, and punitive damages of \$250,000. On appeal, the Kentucky Supreme Court unanimously concluded that "no rational jury could have found that Williams was subjected to unlawful age discrimination." 184 S.W.3d 492 (Ky. 2005) rehearing denied (2006). In the seminal Kentucky case applying *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), the Kentucky Supreme Court held that Williams had established a *prima facie* case. Applying the shifting burdens required by the United States Supreme Court, the Court found that Wal-Mart had presented evidence of its legitimate non-discriminatory reason for termination: a strict policy against employees taking and using merchandise without first paying for it. However, the Court determined that Williams produced sufficient evidence of pretext, albeit weak. Applying *Reeves*, the Court then determined that there was abundant and uncontroverted independent evidence that no discrimination had occurred, specifically, two similarly situated employees under the age of 40 were fired for substantially the same reason and the off-site supervisor who made the termination decision had no knowledge of Williams' age. Therefore, the Court held that no rational fact-finder could conclude that Williams' termination was discriminatory. The jury verdict was overturned in its entirety.

Priscilla Parker v. Pediatric Acute Care, P.S.C.

Plaintiff Priscilla Parker was a long-time employee of Pediatric Acute Care who ultimately rose to the level of office manager position. At the company's holiday party, two female co-workers presented Parker with a "gag gift" consisting of a gift card to an adult store named Priscilla's, which sold lingerie, adult sex toys and sexual movies. After the party, Parker complained numerous times about the gift to PAC's co-owner. Meanwhile, Parker became increasingly unable to meet her job duties; she failed to pay important invoices such as health insurance premiums and insurance bills, made payroll errors, and failed to address problems with the office phone system. PAC terminated Parker's employment in May, 2004. Parker alleged that she was subjected to a sexually hostile work environment and to retaliatory discharge for complaining about the "gag gift." After the trial court dismissed the case on summary judgment, Parker appealed. The Kentucky Court of Appeals upheld dismissal of Parker's claims. 28 WL 746677 (Ky. App. 2008). The Court of Appeals panel agreed that the single instance of the presentation of the gag gift was not sufficiently severe or pervasive to constitute unlawful sexual harassment under KRS 344. Further, the appellate court held that Parker's retaliatory discharge claim also failed because "such an action must be predicated on a causal connection between the statutorily-protected activity and the termination of employment." Because Parker did not offer proof sufficient to sustain her claim of a sexually hostile work environment, the Court determined that Parker could not proceed with her claim of retaliation for having complained about the incident. Accordingly, the Court affirmed summary judgment and the case was dismissed in its entirety.

Race Discrimination, Hostile Work Environment and Retaliation Case

Just one month before trial in August 2012, Dinsmore obtained a summary dismissal of a suit filed by a former security officer who was terminated after 13 years of employment for failing to immediately report to his superiors information regarding possible theft of the Company's product, alcoholic beverages. The officer alleged that he was subjected to race discrimination and a racially hostile work environment and that he had been terminated in retaliation for having filed two EEOC charges 2½ years earlier. The officer also acknowledged that he had failed to timely report information about possible theft, but claimed that a "mixed-motive" standard should apply, allowing a plaintiff to proceed by arguing that his termination was motivated by both lawful and unlawful reasons. The Court rejected this theory, stating that the officer had not proffered evidence that any employee who failed to timely report suspected theft received a less severe discipline. Further, the Court dismissed the officer's racially hostile work environment claim on the grounds that the two instances upon which he based his claims were not directed at him because of his race and did not constitute racial harassment. Finally, the Court dismissed the retaliatory discharge claim on the grounds that the officer did not proffer evidence of a causal connection between his 2005 EEOC charges (both of which were dismissed) and his 2008 termination. Accordingly, the case was dismissed in its entirety with prejudice. The Kentucky Court of Appeals affirmed the summary dismissal of the security officer's claims in their entirety.

Wanda Johnson v. Health Institute of Louisville

Plaintiff Wanda Johnson sued the Health Institute of Louisville alleging that she had been subjected to unlawful gender discrimination and retaliation under Title IX after she alleged that she was sexually harassed by a male instructor and falsely claimed to have filed a sexual harassment charge against the school with the Kentucky Commission on Human Rights. After a week-long jury trial in 2003 in the Western District of Kentucky, presided over by Judge John G. Heyburn, the jury returned a unanimous verdict in favor of the Health Institute.

Publications

June 30, 2015

As of July 1, 2015, Minimum Wage Increase in Louisville Metro-Jefferson County