



Michael W. Hawkins

Partner

michael.hawkins@dinsmore.com

Cincinnati, OH

Tel: (513) 977-8270

Covington, KY

Mike has extensive experience in all aspects of labor, employment law and ERISA litigation and appellate practice. He has argued two cases in the U.S. Supreme Court and many in-state and federal courts of appeals. He has been selected by *Best Lawyers* as a top Labor and Employment lawyer every year since 1989. Mike is an arbitrator and mediator on the AAA panel.

Services

- Labor
- Employment
- Employment Discrimination Litigation
- Class Action
- Labor Arbitrations
- International Business
- Collective Bargaining Negotiations
- NLRB Issues
- Strike Preparation/Litigation
- Wage/Hour Law
- Wrongful Discharge
- Audits, Counseling & Training
- ERISA Litigation & Administrative Proceedings
- ADR Center

Education

- University of Kentucky College of Law (J.D., 1972)
 - Order of the Coif

- Lead articles editor
- University of Kentucky (B.A., 1969)

Bar Admissions

- Ohio
- Kentucky

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Western District of Kentucky

Affiliations/Memberships

- ALFA International Global Legal Network, past chair emeritus
- American Arbitration Association, Labor & Employment Law Panel, mediator and arbitrator
- Kentucky Bar Association, Labor & Employment Law Committee
- American Bar Association
 - Labor & Employment Committee
 - Alternative Disputes Resolution Committee
 - Litigation Section
- Federal Bar Association
- Cincinnati Bar Association, past president and past board member
 - Labor & Employment Law Committee, past chair
- Ohio State Bar Association, Labor & Employment Law Committee
- American Red Cross, Greater Cincinnati Area Chapter, past chapter chair and board member
- Cincinnati Human Relations Commission, Board of Commissioners, vice chair and past chair
- American National Red Cross, Board of Governors, vice chair and International Services Committee
- National Conference for Community Justice, past chair of the board
- United Way and Community Chest, vice president and board member

- American Society for International Law (ASIL), Lieber Society and Dispute Resolution
- Refugees International, Board of Directors, secretary and board member
- Foreign Policy Leadership Council of Greater Cincinnati
- Diversity Law Institute
- College of Labor and Employment Lawyers, fellow
- The Trial Law Institute
- Montgomery Citizens' Leadership Academy (2011)
- Society for Human Resource Management (SHRM)
- World Services Group, North American Council, chair

Distinctions

- Certified as Civil Rights Investigator through the Association of Title IX Administrators (2017)
- Peer Review Rated AV in *Martindale-Hubbell*
- *Best Lawyers*®
 - Arbitration, Employment Law - Management, Labor Law - Management, Litigation - Labor and Employment, Mediation (1989 - 2022)
- Ohio *Super Lawyers*® (2017, 2020)
 - For Employment and Labor (2021)
- *Chambers USA*®: *America's Leading Lawyers for Business*, Labor & Employment
- Leadership Cincinnati Distinguished Alumni Award
- Cincinnati Bar Association's John W. Warrington Community Service Award (2011)
- *Cincy Magazine*
 - Cincy Leading Lawyer
 - Leading Lawyers Power 100 (2021)
- *Who's Who in Greater Cincinnati Law*
- Trial Lawyer Honorary Society
- American Jewish Committee's Judge Learned Hand Award

Mediation

Mike has both the knowledge and track record to help you resolve disputes through mediation.

With more than 40 years of experience as an attorney and hundreds of successful mediations, he uses a tried and true approach that enables both parties to comfortably maneuver through the process toward resolution while

ensuring their interests are protected. He understands mediation involves compromise and negotiation and prepares each party with a preparation guide to ensure the process remains on track and consistent through the mediation. This approach results in a better than 80 percent success rate in settling disputes.

A neutral for the American Arbitration Association (AAA) since 1992, Mike has successfully mediated and arbitrated employment-related claims and commercial disputes, litigation involving discrimination laws, contract and non-compete issues, wrongful discharge claims, construction, and domestic relations. He recently served as chair of the Cincinnati Bar ADR Committee and is a frequent speaker on mediation and conflict resolution. He also taught Mediation and Conflict Resolution at Xavier University in Cincinnati for three years.

Mike uses his career experiences to establish credibility and build trust throughout the mediation process. As an attorney, he has experience in labor and employment matters, handling a variety of cases in courts through the country, including two before the U.S. Supreme Court. Licensed in Ohio and Kentucky, Mike will meet clients in various cities in both states.

He cares about people. He is well-known for his humanitarian actions, including countless mission trips on behalf of Refugees International and the American Red Cross. Balancing his legal experience and a compassion for serving others, Mike has served as chair of the Cincinnati Human Relations Committee and Bridges for a Just Community, where he demonstrated a unique ability to connect with a diverse group of people to reach a common ground.

These experiences help Mike relate to others' needs and build the trust needed to reach win-win solutions for the parties in mediation.

Key Training and Qualifications

- EEOC Mediator Training
- American Arbitration Association
 - Mediator and Arbitrator Certificate
- ALFA International EPLI Conference
 - International Center for Dispute Resolution Neutrals Conference Dispute Resolution of Employee Claims
- Harvard Law School
 - Advanced Mediator Workshop and Negotiation
- Pepperdine-Strass Institute for Conflict Resolution
 - Mediation Training: Art of Facilitation Settlement
- Center for Resolution of Dispute Mediation Training

- Xavier University
 - Taught Mediation and Conflict Resolution
- Northern Kentucky University ADR Center (2018)
 - Co-instructor — FMCS Mediation Training
- AAA Mediation Training (2015, 2016, 2018)

Key Associations

- American Bar Association
 - Dispute Resolution Section
- Center for Dispute Resolution
- National Employment Mediation Services Society of Professionals in Dispute Resolution AAA Employment Law and Commercial Panel
 - Arbitrator and mediator
- Association for Conflict Resolution Cincinnati Bar Association
 - Former chair, ADR Committee
- National Academy of Distinguished Neutrals
 - Ohio and Kentucky

Experience

Allegations of Wrongful Termination by Ex-Employee of Medical Device Manufacturer

When a medical device manufacturer faced allegations of wrongful termination from an ex-employee, they turned to Dinsmore. The plaintiff was an engineer who was originally hired by the client to serve as a project manager. Upon hiring the plaintiff, the terms of his employment were laid out in an employment contract, which also contained deadlines for the completion of various projects. After nearly a year of employment, it was determined that the plaintiff had not met the required deadlines, and he was terminated. The plaintiff alleged he was wrongfully terminated and filed 10 claims against the client, including alleged violation of public policy, breach of contract and age discrimination. We filed a motion for summary judgment, which was granted on nine claims. For the remaining claim of violation of a public policy, we prepared the matter for trial, including managing discovery and taking depositions. On the first day of the trial, before proceedings officially began, we negotiated a settlement favorable to our client, enabling them to avoid litigation.

Provided Outside In-House Counsel Services for Commercial Contracts

We provided ongoing commercial contract support services to our client in connection with some of its key customer and subcontractor agreements. A half-day visit to the client's site to tour the facility and meet key stakeholders along with time familiarizing ourselves with our client's form documents and contractual "pressure points" was all that was needed to immediately add value in an "outside in-house counsel" capacity. We assisted our client in both RFP-based opportunities as well as closed-loop negotiations of master service agreements with both new and existing customers.

University athletic director convicted of embezzlement following independent investigation

We represented a public university whose athletic director improperly used his purchasing authority for personal gain. The university hired us to conduct an independent investigation to determine whether any embezzlement actually took place. Our investigation lasted six months and included hiring an accounting firm to track years of financial transactions, as well as interviews with multiple university officials. We presented our findings to the university president and board of trustees, who in turn authorized us to present our report to the authorities. The athletic director was ultimately convicted of embezzlement.

Successful Defense of Client in Age Discrimination and Retaliation Lawsuit

We represented a national health insurance provider in the Franklin County Court of Common Pleas in a case regarding age discrimination and retaliation. The plaintiff alleged he was discriminated against and retaliated against when he was terminated for performance issues. The plaintiff claimed there was an animus against older workers, and that his supervisor was intent on generating a younger workforce. After taking the plaintiff's deposition and defending the deposition of his direct supervisor, we filed a motion for summary judgment on all claims. Summary judgment was granted as to all claims, and the court adopted much of the brief and reasoning presented by our client.

Received Summary Judgment in Case Involving Allegations of Age Discrimination

We represented our client, Humana, in a matter involving a former employee, who alleged our client violated the Age Discrimination in Employment Act and Ohio's nondiscrimination statute under theories of discrimination, retaliation, and disparate impact. We won summary judgment on all of the plaintiff's claims. After thoroughly reviewing the company's reduction-in-force procedures which resulted in the plaintiff's termination, Judge Beckwith agreed the plaintiff could not "establish a prima facie case of age discrimination relative to his termination in the reduction-in-force because he has not provided additional direct, circumstantial, or statistical evidence tending to indicate that he was discharged because of his age." (*Gilster v. Humana Marketpoint, Inc.*, S.D. Ohio, Case No. 1:14 CV 961, 1/19/16).

Labor & Employment – NLRA

Michael Hawkins served as lead counsel for the respondent before the United States Supreme Court in a National Labor Relations Act (NLRA) dispute between the NLRB and a residential care facility. Mr. Hawkins briefed and argued the case before the Supreme Court, successfully arguing that the NLRB had applied the incorrect test to determine whether registered nurses working at the facility were "supervisors."

Defended Client Against Claims of Sex Discrimination, Hostile Work Environment and Promissory Estoppel Litigation

We represented a national health care provider in a matter referred to arbitration on the plaintiff's claims of sex discrimination, hostile work environment and promissory estoppel. A motion was granted for partial summary

judgment, with the remaining claims resolved in our client's favor following the submission of post-hearing briefs to the arbitrator.

Successful Defense of Client in a Race Discrimination and Hostile Work Environment Suit

We represented an international parts manufacturer in a case regarding race discrimination and a hostile work environment. Our client was sued after the plaintiff was terminated for behavioral issues. After taking the plaintiff's deposition and defending three witness depositions, we filed a motion for summary judgment. The judge agreed with our client's position and granted summary judgment with regard to all of the plaintiff's claims.

Full Defense Verdict in Age Discrimination Allegations

We represented Cengage Learning, an educational content, technology, and services company for in an age discrimination suit. Janet Kerekes, who had been a long-time employee, filed a claim against Cengage for age discrimination after she was terminated for performance issues. After unsuccessful attempts at mediation and denial of summary judgment, the parties went through a seven day jury trial in Franklin County Court of Common Pleas. We successfully obtained a fully defense verdict for Cengage.

Obtained defense verdict for Cracker Barrel against claims of discrimination

After a six day trial, the jury returned a defense verdict on all claims for Cracker Barrel. At trial, the crux of Plaintiff's case became allegations that he was discriminated against due to an alleged disability. Of note, the Dinsmore trial team successfully worked with store management, district level management, and members of Cracker Barrel's employee relations group, to present testimony highlighting the Company's concerted efforts to accommodate Plaintiff and to make decisions based strictly on legitimate business reasons. (*Wills v. Cracker Barrel Old Country Store*, Case No. 2011 CV 08357, 3/5/13)

Won summary judgment in case involving allegations of violating the ADA

We represented Humana Pharmacy, Inc. in a matter where a former employee and his wife alleged that our client violated the Americans with Disabilities Act and ERISA. We won Summary Judgment on all of Plaintiffs' claims. The Court determined that neither a disability, nor potential use of ERISA benefits were motivating factors in Plaintiff's termination with the Company. In granting the Motion, and rejecting Plaintiffs' pretext argument, Judge Spiegel focused on the Company's adherence to its progressive discipline principles: "Defendant has put into the record evidence showing that Mr. Turner's employment was terminated after he failed to improve his performance after he was warned and counseled repeatedly over the course of months." (*Turner v. Humana Pharmacy, Inc. d/b/a RightSource*, S.D. Ohio, Case No. 1:11-cv-260, 10/2/12).

Collective Bargaining Agreement Negotiations

Our firm worked with the bargaining team from OPW Engineered Systems, a Dover Company, negotiating a 5-year collective bargaining agreement with the Glass, Molders, Pottery, Plastics and Allied Workers' International Union and its Local No. 45-B. The members voted to approve the company's final and best offer the eve before the contract expired, avoiding a strike.

Debtor v. Debt Collector

Represented debt collector in class action by debtor alleging violation of the Ohio Consumer Sales Practices Act ("OCSPA") for alleged failure to state consideration paid for the debt in an assignment document. The Richland County Court of Common Pleas granting the debt collector's motion for judgment on the pleadings and dismissed

the OCSPA claim. The court held that the debtor failed to cite to an Ohio case that was sufficiently similar to put the debt collector on notice that its alleged conduct violated the OCSPA; thus, the debtor failed to state a class claim for violation of the OCSPA. The Court further held that any amendment of the complaint to cite to cite additional authority would be futile because the proposed additional authority came from a federal court and was not a decision from a court of "this state."

Fultz & Thatcher v. Burrows Paper Corporation

We represented Defendant Burrows Paper Corporation in a lawsuit seeking in excess of \$1 million for breach of contract. The defense prevailed on summary judgment, and again on appeal, where a three-judge panel rendered a unanimous decision in our favor.

Internal Investigation of Employee Whistleblower Claims

An employee whistleblower accused the Company of illegal and unethical practices related to advertising claims for its products. We responded very quickly to the client's need for an objective, honest, internal investigation. Over the course of six weeks, we interviewed numerous Company employees and managers, prepared a detailed investigation report with recommendations, and conducted a meeting with the employee whistleblower.

Karen Brown v. OPW Fueling Components and Dover Corporation

Plaintiff brought suit against our client, a manufacturer of fueling components, alleging discrimination and retaliation. The Company's Motion for Summary Judgment was granted.

Multi-State Employment Regulation Guide

Dinsmore represented a national restaurant chain operating in more than 40 states to identify core areas of employment regulation at the state level, including wage and hour, child labor, time off - including vacation, voting, jury service and for crime victims - employee privacy rights and several other key areas and incorporated the myriad laws and regulations into a field reference guide for managers, operators and human resources professionals. The guide was prepared in a manner that can be efficiently revised as the laws of the various states are modified. To complement the reference guide, we assisted the client with the preparation of a detailed field management guide for the managers, operators and human resources professionals for the administration of the varied rules affecting their multi-state operations to maximize compliance and minimize both employee relations issues and litigation.

NLRB v. Kentucky River Community Care

Our firm took over the case after the NLRB ruled against the Company; we focused the legal issues to position the case for a successful appeal to the Sixth Circuit where RN's were determined to be supervisors. We then argued and won the case before the U.S. Supreme Court.

Sheri Blaney v. Cengage Learning, Inc.

Won summary judgment in the United States District Court for the Southern District of Ohio for age discrimination and retaliation.

Publications

September/October 2021

Lawyers Connecting Beyond the Law (LCBL)

CBA Report

November 4, 2020

Mediation: The Importance of the Settlement Agreement

October 23, 2020

Virtual Mediations: Seeing Eye to Eye from a Social Distance

CBA Report

October 23, 2020

The Consequences of Overconfidence in Assessing Your Client's Claim

Lex Loci

March 23, 2020

Mediation Minute: There's No Such Thing as an Impasse

Mediation Minute

February 4, 2020

Are You Overconfident in Evaluating a Case for Negotiation or Mediation?

CBA Report

September 30, 2019

The Concept of Anchoring in Negotiation

Mediation Minute

September 18, 2019

MV Transportation Inc. – NLRB rules on employer unilateral action

July 19, 2019

Practice Tip: Mediating the Sexual Harassment Case

Ohio Lawyer

April 1, 2019

Get the Five W's and How: Negotiation Notes and Mediation Minutes

Mediation Minute

April 1, 2019

Be Fully Prepared: Negotiation Notes and Mediation Minutes

Mediation Minute

April 1, 2019

Mediating the Sexual Harassment Case

Mediation Minute

November 28, 2018

Department of Education Proposes New Title IX Regulations

October 1, 2018

When Mediation is Likely to be Helpful

Mediation Minute

2018

Best Practices for a Successful Negotiation or Mediation

Mediation Minute

2018

Ensure the Parties are Open to Negotiate or Mediate the Dispute

Mediation Minute

2018

Pick the Right Mediator and Agree on the Role of the Mediator

Mediation Minute

2018

Insist on Using Objective and Legitimate Criteria

Mediation Minute

2018

Separate the Person from the Problem

Mediation Minute

2018

Focus on Interests, Not Positions Interests

Mediation Minute

2018

Acknowledge Conflicting Interests and Work to Understand your Interests and their Interests

Mediation Minute

2018

Be Flexible in your Solutions and Options for Resolutions

Mediation Minute

2018

Make it Easy for the Other Person to Say Yes with a Win-Win Agreement

Mediation Minute

2018

Know Your Limits and How to Protect Yourself

Mediation Minute

2018

Recognize Unfair Negotiation Tactics and be Prepared to Counter Them

Mediation Minute

2018

Adjust Your Strategy When More Than Two Parties are Involved

Mediation Minute

2018

A Win-Win Approach to Successful Negotiations or Mediation

Mediation Minute

August 13, 2018

An Epic Win for Employers

April 18, 2018

What you need to know about negotiation and mediation

CBA Report

October 24, 2017

Title IX and Resolution of Complaints by Mediation

September 25, 2017

Department of Education Withdraws Title IX Guidance Documents

September 8, 2017

Betsy DeVos Indicates Big Plans to “Reframe” Title IX

July 14, 2017

Title IX: College and University Risk Management