

Employment Group Of The Year: Littler Mendelson

By Braden Campbell

Law360, New York (January 16, 2018, 3:11 PM EST) -- Many pieces of Obama-era labor and employment policy fell in 2017, and no private group of lawyers did more on that front than Littler Mendelson PC, earning the workplace-focused superboutique a spot among Law360's Labor and Employment Groups of the Year.

Littler attorneys were involved in four regulatory challenges last year, including suits over the Obama administration's rule that more than doubled the salary threshold for overtime exemption and its requirement that businesses disclose labor citations when bidding for government contracts. The firm won injunctions or judgment on three, which its leaders credit to its deep roster of experts.

"What we've tried to do in the marketplace is distinguish our platform from others, and I think what you can see from these cases is we're really trying to offer a level of subject-matter expertise," Littler co-president and co-managing partner Jeremy Roth told Law360.

Littler drove the final nail into the coffin of Obama's overtime rule revision in its biggest win of the year. The rule revised the salary prong of the U.S. Department of Labor's so-called white collar overtime exemption test to require that workers making less than \$47,476 be paid overtime, a little more than double the prior \$23,660 threshold. The rule would have extended the Fair Labor Standards Act's overtime protections to millions more workers, even if they performed the supervisory tasks that satisfy the test's other prong.

Led by shareholder Maury Baskin, Littler represented a coalition of business groups in their Eastern District of Texas suit over the rule. Baskin argued that the DOL overstepped its authority under the FLSA by elevating the salary test — which has been in use for decades but is not described in the FLSA text — above the duties test, which is in the statute.

U.S. District Judge Amos Mazzant agreed, enjoining the revision in November 2016, days before it took effect. In August he granted the business groups summary judgment.

"You can imagine the massive number of employees that were in that \$23,000 to \$47,000 delta," Roth said. "It was a huge, huge win."



Baskin also led the judicial charge against the DOL's Fair Pay and Safe Workplaces rule, which among other things would have required bidders for government contracts to disclose whether they'd been assessed labor violations, even if the citations were still pending. Littler won an injunction on the disclosure provisions in Texas federal court in October 2016, and President Donald Trump in March signed a resolution rescinding the rule.

Littler in March convinced the D.C. Circuit to reject the National Labor Relations Board's broadened test for employee status and rule that the board had wrongly found a group of FedEx Ground drivers in Boston to be employees, rather than independent contractors. And the firm was the first to challenge another DOL rule that would have required businesses to tell the agency when they hire attorneys or consultants to wage anti-union campaigns. Another group of challengers won an injunction blocking that rule in November 2016, though Littler worked with them to "come up with a unified theory," Baskin said.

That Littler had so much success challenging regulations in 2017 was no accident, leaders say. The firm has sought to play a more active role in shaping policy since its 2012 hire of Michael Lotito, who co-chairs its Workplace Policy Institute. It has also continued to add policy experts like Tammy McCutchen, a DOL wage and hour administrator under President George W. Bush.

"On the overtime rule case, we also had Tammy McCutchen, who coincidentally wrote the last set of regulations on this particular issue for overtime when she was in the Bush administration," said Thomas Bender, the firm's other co-president and co-managing partner. "It's that level of expertise."

Baskin echoed the co-managing partner, adding that the firm has also built close relationships with the business groups that were plaintiffs in the suits.

"It took a combination of different elements that Littler was able to bring to the table," Baskin said. "For the strategy of having to attack this, having subject-matter experts in all different matters of labor law, having office locations everywhere with local knowledge."

On top of mounting these regulatory challenges, the firm hired dozens of laterals, added a U.K. office and invested in its growing data analytics program.

"We're trying to differentiate our brand, not just to be different but to really add a value proposition for clients that doesn't exist" at other firms, Roth said.

--Editing by Jeremy Barker.