



## Brian T. McMillan

Shareholder

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## Practice Areas

Litigation and Trials  
Discrimination and Harassment

## Overview

Brian T. McMillan focuses his practice on wrongful termination and employment discrimination litigation in state and federal courts. He also defends and represents employers in:

- Wage and hour claims
- Unemployment hearings and appeals
- Arbitrations
- Labor negotiations
- Workplace violence issues
- Claims under state and federal discrimination laws

Among his notable successes, Brian was lead counsel in the precedent setting case that determined temporary psychological impairments do not constitute disabilities under the Americans with Disabilities Act - (*Sanders v. Arneson Products Inc.*, 91 F.3d 1351 (9th Cir. 1996)).

Additionally, Brian frequently counsels employers on day-to-day employment law issues such as:

- Employment contracts
- Covenants not to compete
- Unfair business practices
- Personnel policies
- Hiring and termination procedures
- Risk management protocols

- Mandatory arbitration

He also conducts in-house training sessions and risk management audits to help clients avoid employment-related liability.

Co-creator of Littler Mendelson's Risk Management Program, a comprehensive program to review and assess an employer's employment policies and practices, Brian is widely-considered a leading authority on employment practices liability insurance issues and has authored several articles on this topic. He has also published articles on topical employment law issues and has made numerous presentations on specialized areas of labor and employment law, such as:

- Wrongful termination
- Wage and hour issues
- Avoiding liability associated with layoffs and downsizing
- Discrimination
- Violence in the workplace

## **Professional and Community Affiliations**

- Member, Labor and Employment Law Section, Santa Clara County Bar Association
- Member, Labor and Employment Law Section, San Mateo County Bar Association
- Member, Labor and Employment Law Section, State Bar of California

## **Events & Speaking Engagements**

### **Insurance Coverage of Employment Law Claims: How Employers and Insurance Carriers Can Work Together Effectively**

Littler Mendelson, Scottsdale, AZ

May 11, 2012

### **Avoiding Potential Conflicts of Interest Between Insureds and Defense Counsel**

Employment Practices Liability Symposium

April 2006

### **Employment Class Actions**

Employment Law Symposium - Professional Liability Underwriting Society

April 2005

### **Avoiding Litigation Landmines**

Annual Convention - American Supply Association

2001

### **Separation Practices - Severance/Release Agreements and Reductions in Force**

Top Five Data Services

2001

### **Employment Practices Liability Insurance**

Producers' Conference - AIG

2001

### **Avoiding Litigation Landmines**

National Truckers Association Conference

2001

### **Influencing the Behavior of Employee Claimants**

EPL Insurance Symposium - Professional Liability Underwriting Society

March 1999

### **Avoiding Litigation Landmines**

AIG Executive Conference

October 1998

### **Books & Book Chapters**

Managing Workplace Harassment -- A Guide for Preventing, Addressing and Resolving Harassment Issues on the Job,

*LexisNexis*, 2003

, *Ten Steps to Help You Stay Out of Court - Hire & Fire Guide*, 2001

, *A Complete Program for Preventing, Addressing and Resolving Harassment Issues in the Workplace - Unlawful Harassment Module*, 2000

, *Family and Medical Leave Act -- A Ten-Step Federal and State Compliance Guide For Employers*, 2000

### **Education**

J.D., Santa Clara University School of Law, 1983

B.A., University of California, Davis, 1980, *With Honors*

### **Bar Admissions**

California

### **Courts**

U.S. Supreme Court

U.S. Court of Appeals, 9th Circuit

U.S. District Court, Northern District of California

U.S. District Court, Eastern District of California

U.S. District Court, Southern District of California

### **Publications & Press**

**EPLI Often Excludes Wage and Hour Claims**

*In the News*

November 1, 2021

**How to avoid suits alleging wage-and-hour violations**

*In the News*

July 24, 2012

**Brian McMillan Accounts For Dramatic Increase in Wage and Hour Class Actions**

*In the News*

December 21, 2007

**Managing Employment Risk of Employment-Related Practices Liabilities by Influencing the Behavior of Employee Claimants**

*Western New England Law Review, Vol. 21, Issue 2, pg. 427-446*

1999

**The EPLI Shopping Guide**

*Insurance Litigation*

1999

**EPLI Policies**

*National Law Journal*

1998

**Questions to Ask When Buying EPLI**

*Preventative Law Reporter, Vol. 6, No. 3*

Fall 1997

**Breathe Again, Insurance for Employers**

*California Law Business*

1997