

MVP: Sheppard Mullin's Richard Simmons

By Braden Campbell

Law360 (November 20, 2019, 4:59 PM EST) -- Sheppard Mullin Richter & Hampton LLP wage-and-hour ace Richard Simmons persuaded the California Supreme Court to say workers can waive their rights to a second meal period during long shifts, notching a rare management-side win there and earning himself a spot among Law360's 2019 Employment MVPs.

HIS BIGGEST ACCOMPLISHMENT OF THE PAST YEAR:

Simmons' win at the California high court was a sweet one after almost a decade of hard-fought litigation, he said.

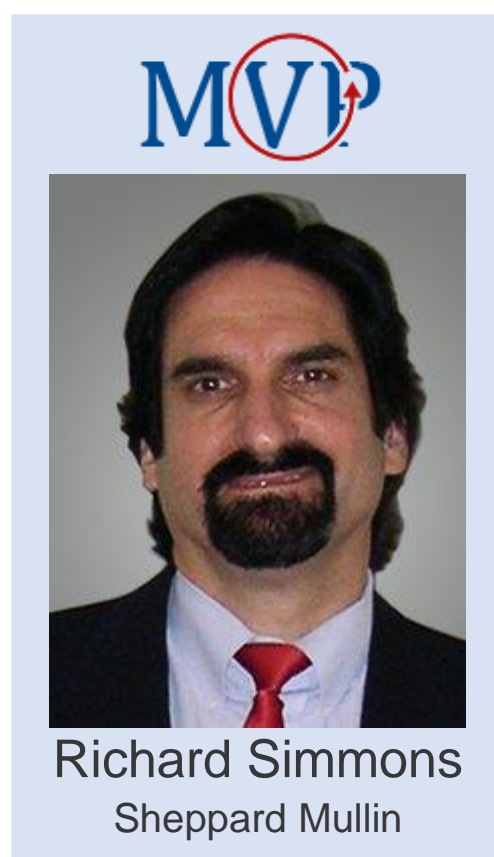
Simmons represented Orange Coast Memorial Medical Center, which stood accused of a host of California Labor Code violations, including that it shorted workers on pay by letting them forego a second meal during long shifts.

California's meal break statute requires employers to give workers one meal break during a regular shift and two for shifts lasting longer than 10 hours, though it lets workers waive the second break as long as they don't work more than 12 hours. But this clashes with an order from the state's Industrial Welfare Commission giving workers more leeway to skip that second break to get out sooner.

"Most people want to avoid prolonging what is already a long day," Simmons said.

But the workers in the suit claimed Orange Coast shorted them through its waiver policy, alleging the IWC exceeded its powers with the order. A state circuit court sided with the workers, and Simmons appealed to the California Supreme Court, where he found an unlikely ally: the United Nurses of California.

"They're usually not on the same side as management. ... They said, 'Our members, the nurses of California, want the ability to waive one of the two meal periods,'" Simmons said. As that appeal played out, he and the union pushed Senate Bill 327, which repudiated the appeals court's ruling and upheld the IWC's order.



The bill passed, and the Supreme Court kicked the case back to the circuit court. This time, it sided with Simmons — and the workers appealed to the state's high court, where Simmons secured the management side's only win of the year in December 2018.

"It was an incredible experience" to litigate and legislate the same issue, Simmons said. "It was a pretty remarkable thing I got to do as an employment lawyer, because you don't ordinarily do all that stuff."

OTHER NOTABLE CASES HE'S WORKED ON:

Simmons has been involved in high-stakes litigation since the start of his career, when he was tasked with helping businesses navigate what was then a fairly new law: the Employee Retirement Income Security Act.

A few years after the law took effect in the mid-1970s, Simmons brought a federal case challenging a California law on vacation pay under an untested ERISA provision largely preempting state efforts to legislate worker benefits. Simmons won in the district court but suffered a partial loss in the Ninth Circuit, which narrowed the lower court's ruling. A few years later, he won a decision striking a state law making businesses pay for injured workers' health insurance premiums for however long they were on workers comp. This time, the state conceded the case, he said.

"It was a great victory not only for that client, but for everybody" because it spared employers from having to make payments for "literally years," he said.

Simmons was also involved in the first case in California history in which the state upheld sex as a valid qualification for getting a job. Simmons represented a hospital in an administrative case the state's Department of Fair Employment and Housing, which administers the state's job bias laws. A male nurse's aide had alleged he was discriminated against by not being allowed to work in a section of the hospital that treated post-partum women.

Simmons recalled the case polarized agency officials, some of whom found it reasonable that the hospital would only want women working there. At trial, he cross-examined the agency investigator who had spearheaded the case.

"He was steeped in admiration, because he'd never been eviscerated as he was during this cross-examination," Simmons said. They would meet again about a decade later, when the supervisor called Simmons from his deathbed.

"He wanted to tell me how I had moved him ... in a positive way because of the way I had handled his cross-examination," Simmons said. "I don't even know how to describe it. That was pretty cool."

WHY HE'S AN EMPLOYMENT ATTORNEY:

While Simmons is an able litigator, he found his legal niche through another facet of the industry: writing.

After his first year of law school at the University of California, Berkeley School of Law in the 1970s — "after I realized I could pass," Simmons said — he started looking for something to do other than studying all the time.

"They were putting together a journal, what was at the time called Industrial Relations Law Journal, at Berkeley," Simmons said. "I said, 'This would be a neat activity to get involved in.'"

Simmons grew up in a business family, and as one of few journal staffers with such practical experience with employment, he quickly ascended to editor-in-chief. When it came time to look for firm jobs at the end of his college career, "everybody who interviewed me thought I was the new messiah in employment law," Simmons recalled.

That experience won him a job at a law firm, where he lucked into an assignment writing a wage-and-hour manual for the California Hospital Association.

"The guy in charge of it at the hospital association took a liking to me as a young guy and told [my firm], 'I want Simmons to write this,'" he recalled. "So, lo and behold, I wrote the first wage-and-hour manual in California back in the day."

Simmons has continued honing the craft that earned him his big break, and his latest California wage law manual was picked up this year as the reference text for the Continuing Education of the Bar of California.

HIS ADVICE FOR JUNIOR ATTORNEYS:

Simmons loves employment law, from the "sex, drugs and rock and roll" of personnel issues to the opportunities "to be adversarial and bite people in the neck" that litigation affords. To achieve success similar to his, junior attorneys should approach the law with the same fervor, he said.

"Try to be passionate," Simmons said. "Do something you really love."

Along these same lines, it helps to find a group of colleagues whose skills you respect and whose company you enjoy, he said. And it's always important to be prepared, he said.

"One of the things I was told when I started was, it's your obligation as a lawyer to know more than anyone else in the room on your topic, and while you may fall short of that from time to time, just like Michael Jordan missed a lot of shots, ... you never have an excuse to fail."

— *As told to Braden Campbell*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2019 MVP winners after reviewing nearly 900 submissions.