



→ Kevin M. Cloutier

Partner

321 North Clark Street
32nd Floor
Chicago, IL 60654

T: +1.312.499.6304

F: +1.312.499.4730

kcloutier@sheppardmullin.com

Kevin Cloutier is the Co-Managing Partner of Sheppard Mullin. He serves on the firm's Executive Committee, Diversity and Inclusion Committee and was a founding partner of the firm's Chicago office. Kevin's leadership roles have also included serving on the firm's Compensation Committee, co-leader of the Trade Secrets practice and Chicago office recruiting chair.

As a member of the firm's management team, Kevin focuses on the operation and growth of the firm's practice groups, offices and industry teams. He also has significant responsibility for the firm's lateral partner recruiting efforts.

Before moving into management roles at the firm, Kevin's national practice focused on all areas of labor and employment law and business litigation, with an emphasis on high-stakes, employment-related litigation and proactive investigations and counseling for management-side clients. Kevin is an experienced trial lawyer with first-chair trial experience before state and federal trial and appellate courts all over the country, arbitrators, FINRA, the National Labor Relations Board, and administrative agencies. He has successfully argued and won multiple law-changing and precedent-setting federal appeals and has represented clients in more than 25 states. He has consistently been recognized by his peers as one of the leading lawyers in Illinois and nationally (Illinois Super Lawyers and Best Lawyers in America) and has been named a Labor and Employment Star by Benchmark Litigation. *The American Lawyer* has twice named Kevin a "Litigator of the Week." *Crain's Chicago Business* recently recognized Kevin as a Notable Leader in Employment & Labor Law.

In addition to his client work, Kevin is actively involved in pro bono efforts and has successfully represented several prisoner and of-need clients in important federal court litigation. He also regularly counsels non-profit social services agencies on a wide range of employment matters.

Honors

Labor and Employment Leader, *Crain's Chicago Business*, 2023

Labor and Employment Star, *Benchmark Litigation*, 2018-2023

Illinois Super Lawyer, *Super Lawyers*, 2013-2023

Best Lawyer in America, *Best Lawyers*, 2014-2024

Rising Star, *Illinois Super Lawyers*, 2010-2012

Experience

Recent Litigation Matters

- Obtaining reversal and mandated judgment for a national carrier client in an appeal before the Eighth Circuit in an employee raiding, non-compete, and tortious interference case
- Obtaining multiple temporary restraining orders, preliminary injunctions and permanent injunctions in non-compete, unfair competition, deceptive trade practices and trade secrets cases around the country on behalf of national security services firm
- Obtained temporary restraining order and preliminary injunction in a trade secret and non-solicit case in Texas
- Representing a national transportation company in nationwide FLSA "off-the-clock" action, successfully compelling arbitrations and negotiating favorable settlement
- Successfully defending against and defeating conditional certification in a nationwide FLSA "off-the-clock" action
- Successfully representing an international pharmaceutical company in a multi-million dollar stock option breach of contract action and obtaining summary judgment in favor of client
- Successfully representing a geospatial solutions provider in trade secrets misappropriation case in Oregon State and obtaining temporary restraining order sidelining departing employees and preventing misappropriation
- Representing an international carrier in a retaliatory discharge case in federal court, obtaining summary judgment in district court and successfully arguing appeal before the Seventh Circuit that resolved in favor of employers a critical and unsettled question of law regarding the proper standards for retaliatory discharge cases under Illinois law when litigated in federal courts
- Successfully representing an international carrier in a series of FLSA misclassification arbitrations
- Successfully representing a pro bono client in a Seventh Circuit discrimination action
- Representing an international construction services firm in a FLSA collective action and state law class action alleging misclassification of employee FLSA exemptions for overtime purposes and failure to pay overtime
- Successfully representing an international pharmaceutical company in False Claims Act "whistleblower" action and obtaining summary judgment in favor of client
- Successfully representing an international architectural services outsourcing firm in multi-day arbitration against former executive for severance claim
- Representing a hedge fund and a newly hired employee in Illinois state court in a "non-compete" and employee non-solicitation case, successfully overcoming the former employer's motion for a temporary restraining order and prevailing in arbitration before FINRA
- Successfully representing a private equity client and a portfolio company's board of directors in a commercial arbitration breach of contract case against a former executive of the portfolio company
- Successfully representing a pro bono client before the Seventh Circuit Court of Appeals in a Section 2255 motion to vacate a judgment
- Representing a national healthcare company in federal court in a "non-compete" and trade secret case, which resulted in a temporary restraining order against a former employee and a competitor

- Representing a national software development company in Alabama state court in a non-compete and employee raiding case, which resulted in a temporary restraining order and preliminary injunction against former employees and competitor
- Representing a national manufacturing company in South Carolina state court in an unfair competition, deceptive trade practices, trade secret and employee raiding case, which resulted in a preliminary injunction in favor of client against a former employee and competitor
- Representing a healthcare employer in a labor discharge arbitration, which resulted in an award denying the employee's grievance and affirming the client's discharge decision based on "just cause"
- Representing a national manufacturing client in a retaliatory discharge case in Illinois state court and obtaining a dismissal on summary judgment
- Representing a national healthcare employer in a breach of contract and fraud case in Illinois state court and obtaining a dismissal based on ERISA preemption
- Representing a national health and pharmaceutical research company in a disability (ADA) discrimination and denial of benefits (ERISA) case in federal court and obtaining a dismissal on summary judgment
- Representing an international financial services fund in commercial arbitration case involving enforceability of restrictive covenants, bonus compensation eligibility and forfeiture of deferred compensation benefits, which resulted in an award in favor of the employer and dismissal of the employee's claims after a full evidentiary hearing

Articles

- Three new laws slated for summer will require employers to be ready
Chicago Daily Law Bulletin, 02.20.2020
- New marijuana law has ins, outs employers should be aware of
Chicago Daily Law Bulletin, 02.13.2020
- Employers must pay attention to new laws, impact on workplace
Chicago Daily Law Bulletin, 02.06.2020
- Deposition Questions in a Trade Secret Misappropriation and Breach of Restrictive Covenant Action (Plaintiff Employer to Defendant)
Lexis Practice Advisor, 01.2020
- Discovery on Behalf of Plaintiffs in Trade Secret Misappropriation and Breach of Restrictive Covenant Actions
Lexis Practice Advisor, 01.2020
- Employment issues to consider when expanding in the United States
Financier Worldwide, 05.15.2019
- Trade Secret Litigation
Tips on How to Allege and Establish Trade Secret Misappropriation at a Preliminary Injunction Hearing
IP Litigator, 12.2017
- More Legal Employment Traps to Avoid When Expanding South of the Border (Part 2)
The Lawyer's Daily, 07.20.2017
- Legal Employment Traps to Avoid When Expanding South of the Border (Part 1)
The Lawyer's Daily, 07.10.2017

- Cybersecurity Measures to Protect Employers' Confidential Information and Trade Secrets
Lexis Practice Advisor, 05.11.2017
- Engaging in Discovery on Behalf of Plaintiffs in Trade Secret Misappropriation and Breach of Restrictive Covenant Actions
Lexis Practice Advisor, 05.2017
- Noncompete Agreements as Varied as Number of States, Courts
Chicago Daily Law Bulletin, 05.04.2017
- "Engaging in Discovery on Behalf of Plaintiffs in Trade Secret Misappropriation and Breach of Restrictive Covenant Actions," *Lexis Practice Advisor*, January 27, 2017
- "What Organizations Need to Know When Facing Conditional Certification Under Section 216(B) of the FLSA," *Thomas Reuters*, August 2016
- Co-Author with C.T. Oblander and K. Zeabart, "EPLI, Invasion of Privacy, and Identity Theft," *The John Liner Review*, Vol. 19, No. 3, 21-35, Fall 2005
- He also has previously published articles in the *Employment Law Strategist*.

Corporate & Securities Law Blog Posts

- "Buyer Beware: Delaware Declines to Enforce Sale of Business Non-Compete," January 23, 2023
- "Sellers Beware: Fiduciary Duty Risks to Directors," March 16, 2021

Labor and Employment Law Blog Posts

- "What Does Affirmative Action's Death Knell Mean for Employers?," July 12, 2023
- "Buyer Beware: Delaware Courts Continue to Refuse to Enforce Deal-Based Non-Competes," June 29, 2023
- "Illinois Supreme Court Rules All BIPA Claims Are Subject to Five-Year Time Limit," February 3, 2023
- "FTC Seeks to Ban Noncompete Agreements in Employment Contracts," January 6, 2023
- "Could the Supreme Court's Decision in the Harvard and UNC Cases Indirectly Affect Corporate Diversity Initiatives?," November 17, 2022
- "Buyer Beware: Tenth Circuit Issues Decision Emphasizing Critical Need for Employment Diligence," September 1, 2022
- "Colorado's New Restrictive Covenant Law Now Effective," September 1, 2022
- "Buyer (and Seller) Beware: The FTC Is Coming for Your M&A Non-Competes," June 21, 2022
- "Void vs. Voidable: The Distinction That Can Make or Break a Tortious Interference Claim in Light of the Great Resignation," May 9, 2022
- "Seventh Circuit Certifies Hotly-Contested BIPA Accrual Issue to Illinois Supreme Court," January 10, 2022
- "Illinois Appellate Court Affirms 5-Year Statute of Limitations Period for Certain BIPA Claims," September 20, 2021
- "President Biden and OSHA to Require Vaccine Mandate or Weekly Testing for Employers with 100+ Employees," September 10, 2021
- "Illinois Governor Signs Non-Compete Legislation," August 26, 2021

- "What Do I Do With My Workplace Drug Policy Now That Cannabis Is Legal in Illinois and My Employees Are Remote?," July 28, 2021
- "What Employers Need to Know About New Non-Compete Legislation in Illinois," June 8, 2021
- "Governor Signs Sweeping Changes to Illinois Employment Laws," May 12, 2021
- "The Critical Nature of Labor and Employment Diligence in Transactions," March 18, 2021
- "Fifth Circuit Shuts Down FLSA Conditional Certification," February 1, 2021
- "What Employers Need to Know About Colorado's New Equal Pay Act," December 9, 2020
- "Employers: Do Not Forget Your Sexual Harassment Prevention Training Requirement," May 4, 2020
- "U.S. Supreme Court Case Preview—*Van Buren v. United States*: Does Use of a Computer for an "Improper Purpose" Violate the Computer Fraud and Abuse Act?," April 30, 2020
- "DOJ and FTC Issue Joint Statement Regarding COVID-19 and Antitrust Violations," April 22, 2020
- "The CARES Act: A Comprehensive Overview for Employers," March 31, 2020
- "Illinois Statewide Stay at Home Order: What Employers Need to Know," March 20, 2020
- "Proposed Bill Would Ban Employee Non-Compete Agreements in Illinois," February 19, 2020
- "The Time Is Now for Employers in Illinois to Abide by New Laws," January 9, 2020
- "Salary History Off-Limits Under New Illinois Equal Pay Law," August 2, 2019
- "Actual Injury Unnecessary to Sue Under Illinois Biometric Law," February 5, 2019
- "Lessons Learned: Tips on How to Allege and Argue Trade Secret Misappropriation at a Preliminary Injunction Hearing," August 30, 2017
- "For Your *Consideration*: Recent State-to-State Developments on Sufficient Consideration for Employee Non-Compete Agreements," March 27, 2017
- "New Guidance for HR Professionals Regarding Wage-Fixing and No-Poaching Agreements Highlights New Focus on Criminal Prosecutions and Raises New Concerns for Employer," December 5, 2016
- "Illinois Limits Non-Compete Agreements Yet Again," September 7, 2016
- "The Defend Trade Secrets Act – Coming to a Federal Court Near You," May 9, 2016
- "An In-Depth Analysis of the NLRB's Decision to Permit Employees to Use Employer Email Systems for Union Organizing and Other Non-Work Purposes," December 12, 2014

Trade Secrets Law Blog Posts

- "Supreme Court Narrows The Scope of Liability Under The Computer Fraud and Abuse Act," June 8, 2021
- "Diminution in Value As A Measure of Damages for Trade Secret Misappropriation," March 16, 2021
- "Fifth Circuit Affirms Attorney's Fee Award of \$2.3 million in Misappropriation Case Against Former Employee who Failed to Comply with Court's Objections Order," September 22, 2020
- "Cybercrime 2020 – The Rise of 'Vishing'," August 28, 2020

Books

Employer's Guide To COVID-19 And Emerging Workplace Issues (Over 690 pages)
04.21.2020

Media Mentions

After 18 Years, Sheppard Mullin Elects New Managing Partner
Law360, 01.02.2024

Sheppard Mullin Appoints Kevin Cloutier to Managing Partner Role
Bloomberg Law, 01.02.2024

This Supreme Court Case Could Spell the Beginning of the End for Affirmative Action. It's a Looming Crisis for Corporate America.
Fortune, 05.30.2023

Pending SCOTUS Cases on Race-Based Admissions in College Could Have Chilling Effect on Big Law Diversity Efforts
Corporate Counsel, 05.12.2023

Litigator of the Week Runners-Up and Shout Outs
The AmLaw Litigation Daily, 04.11.2023

Litigator of the Week Runners-Up and Shout Outs
The American Lawyer, 08.13.2021

Cybercriminals Target Remote Workers
FBI warns employers about new wrinkle to old scams.
EHS Today, 09.14.2020

Noncompete Developments To Watch For In 2020
Law360, 01.14.2020

Sub Shop Settlement Shines Light on Law
Chicago Daily Law Bulletin, 12.08.2016

Non-compete Agreements Banned for Low-Wage Employees in Illinois
Cook County Record, 10.04.2016

7 Important Noncompete Rulings From The 1st Half Of 2015
Law360, 07.16.2015

Noncompete Ruling Means Headaches For Ill. Employers
Law360, 08.01.2013

6 Tips To Maximize Noncompetes' Enforceability
Law360, 07.26.2013

Speaking Engagements

Kevin is often invited to present at professional associations and industry seminars. He has presented a number of seminars on the interplay of the American with Disabilities Act, the Family and Medical Leave Act and Workers' Compensation laws. In addition, he recently delivered a presentation regarding employment issues facing private equity firms and their portfolio companies and common employment issues arising in corporate transactions. He has also presented on employee (mis)classification issues under wage and hour laws and on emerging issues in trade secrets laws and noncompetes.

Events

Class Action Threats in 2023 And Beyond - A Webinar Series
Webinar Series, 2023

No Class, Just a Massive Headache: Mass Arbitrations
Class Action Threats in 2023 and Beyond - A Webinar Series
Webinar, 08.29.2023

The Evolving Landscape of Biometrics Legislation – Illinois' Biometric Information Privacy Act and Beyond
Virtual, 09.14.2021

Employee Wellness in the Time of COVID-19: Employee Mental Health and Well-Being, Vaccinations and Return to Office (Or Not)
Webinar, 02.11.2021

Getting Back to Business Webinar Series (Part 1)
Planning and Best Practices for Employers in a Changed Workplace
Webinar, 05.21.2020

Labor and Employment Law Update
Sheppard Mullin Chicago, 11.28.2018

Labor & Employment Law Update - New York
Spring 2017
05.23.2017

CLE Credits and Cocktails
Sheppard Mullin Chicago
05.18.2017

Labor & Employment Breakfast Briefing - Chicago
09.10.2015

Sheppard Mullin's Labor & Employment Breakfast Briefing Series - Chicago
Labor & Employment Update
06.25.2015

Protecting Trade Secrets and Confidential Information: The Threat From Within
06.17.2015

9th Annual Employment Law Conference
Hosted by Law Bulletin Seminars
09.17.2014

What Keeps You Up at Night?
Hot Topics in Domestic & International Labor & Employment Law
06.21.2013

2012 Labor and Employment Year in Review
How the U.S. Presidential Election and the Current Economy Will Impact Labor and Employment Laws in 2013 and Beyond
Grand Hyatt New York, 11.15.2012

Memberships

Member, Society for Human Resources Management (SHRM)
Member, Labor and Employment Section and the International Law Section, American Bar Association
Member, Houston Bar Association
Member, Chicago Bar Association
Member, U.S. Soccer Federation (Licensed U.S. Soccer Coach)
Member, Sports Lawyers Association
Member, Canadian-American Bar Association

Podcasts & Webinars

Nota Bene Episode 117: The Critical Nature of Labor & Employment Diligence in Corporate Transactions with Kevin Cloutier and Shawn Fabian
03.17.2021

Getting Back to Business Webinar Series: Session One
05.21.2020

Practices

Labor and Employment
Labor and Employment Counseling
Employee Hiring/Discipline/Termination

Harassment Investigation and Training
Unfair Competition and Trade Secrets
Wage and Hour Regulations
Labor and Employment Litigation
Discrimination, Harassment, and Retaliation
Employee Privacy and Defamation
Wage and Hour Class Actions
Labor Union Management Relations
Employee Benefits/ERISA
Trade Secrets
Litigation
Private Equity
Healthcare
Biometric Information Privacy Act (BIPA)
Digital Health
Veterinary Health

Industries

Cannabis
Construction
Education
Energy, Infrastructure and Project Finance
Financial Services
Food and Beverage
Healthcare
Life Sciences
Private Equity
REIT
Sports
Transportation
Trucking and Logistics

Education

J.D., Indiana University, 1999, *cum laude*, *Indiana Law Journal*

B.A., Hamilton College, 1994, with honors

Admissions

Indiana

Illinois

Michigan

Texas

Wisconsin

U.S. District Court, Central District of Illinois

U.S. District Court, Northern District of Illinois

U.S. District Court, Southern District of Illinois

U.S. District Court, Northern District of Indiana

U.S. District Court, Southern District of Indiana

U.S. District Court, Eastern District of Michigan

U.S. District Court, Western District of Michigan

U.S. District Court, Western District of Texas

U.S. District Court, Eastern District of Texas

U.S. District Court, Southern District of Texas

U.S. District Court, Northern District of Texas

U.S. District Court, Eastern District of Wisconsin

U.S. District Court, Western District of Wisconsin

U.S. Court of Appeals for the Fifth Circuit

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Eighth Circuit

U.S. Court of Appeals for the Ninth Circuit