



## → Sean J. Kirby

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Sean Kirby is a partner in the Labor and Employment Practice Group in the firm's New York office.

### Areas of Practice

Sean's practice encompasses the defense of single plaintiff and class action discrimination, wrongful discharge and wage/hour claims, in addition to employment contract, restrictive covenant, whistleblower, sexual harassment, and related claims. He regularly represents clients in labor and employment litigations in federal and state courts, in arbitrations before the American Arbitration Association and the Financial Industry Regulation Authority, and in proceedings before various administrative agencies, including the Equal Employment Opportunity Commission, the U.S. Department of Labor and state agencies throughout the United States.

Sean also counsels domestic and international clients on day-to-day workplace employment issues such as the preparation, administration and enforcement of personnel policies, hiring procedures, reductions-in-force, severance and termination strategies, employee discipline, disability, leaves of absence, wage/hour law, compliance with anti-discrimination laws, the labor election process, and the extraterritorial application of U.S. laws. Sean regularly drafts and negotiates employment, separation, non-compete, and non-solicitation agreements. He also conducts discrimination and harassment prevention trainings, as well as investigations into harassment allegations, whistleblower complaints, and other employment matters.

Sean also defends disability access discrimination claims under the Americans with Disabilities Act and New York State and City accessibility standards. He has experience in matters ranging from architectural barrier access cases to cutting edge disability access claims involving websites, and other new media. His experience includes representing several national restaurant chains, retail establishments, and other businesses.

Sean also has experience representing clients in a variety of general commercial and financial disputes including breach of contract, securities and accounting fraud.

### Honors

New York Rising Star, *Super Lawyers*, 2011-2019

Selected, *Top 40 Labor & Employment Lawyers Under 40 in the State of New York*, The American Society of Legal Advocates, 2013-2016

## Articles

- United States Employment Law Update  
*Legal Era*, 12.15.2021
- A Biden Administration's New Vision for the American Workplace  
*Legal ERA*, 12.2020
- Pre-Employment Testing and Screening: Common Practices, Potential Issues  
*New York Law Journal*, 10.19.2015
- Access Denied: Employers Should Avoid Seeking Access to Social Media Accounts  
*Bloomberg BNA*, 07.19.2012
- "A Decade In The Making: What Employers Can Expect From A Fully Staffed NLRB," *The Metropolitan Corporate Counsel*, November 2013
- "ADA Amendments Breathe New Life Into Disability Claims," *New York Law Journal*, May 4, 2012
- "Condo Hotels As Securities," *HotelExecutive.com*, July 1, 2008
- Arbitrating Hotel Management Agreement Disputes: Beware of "Arbigation", *Hotel Executive.com*, March 1, 2008

## Corporate & Securities Law Blog Posts

- "United States Supreme Court Holds That Section 806 of the Sarbanes-Oxley Act Extends to Employees of Private Companies Who Are Contractors or Subcontractors for Covered Public Companies," March 12, 2014
- "First Circuit Holds That Section 806 of the Sarbanes-Oxley Act Extends Only to Employees of Public Companies, Not Employees of Private Companies Who Are Contractors or Subcontractors for Covered Public Companies," February 15, 2012
- "Second Circuit Vacates Dismissal Of Securities Fraud Claims Holding That Mutual Funds' Alleged Misrepresentations Regarding Payment Of Transfer Agent Fees Were Material", March 1, 2010

## Labor and Employment Law Blog Posts

- "The Department of Labor Issues New Final Rule for Independent Contractor Classification," February 14, 2024
- "New York Amends Its Release Agreement Law for the Third Time," November 29, 2023
- "New York Makes Wage Theft a Criminal Larceny in New Amendment to Its Penal Law," September 29, 2023
- "Beyond Appearances: New York City Enacts Legislation Prohibiting Discrimination Based on Height and/or Weight," September 11, 2023
- "New Jersey Significantly Expands Rights and Protections of Temporary Workers Through the Recently Enacted Temporary Workers' Bill of Rights," May 25, 2023
- "New Jersey Legislature Passes Bill to Set the Effective Date of Amendments to the New Jersey WARN Act," January 10, 2023
- "New Year, New Rules for Employers Doing Business in New York in 2023," December 19, 2022
- "New Year, New Rules for Employers Doing Business in New Jersey in 2023," December 19, 2022
- "The Department of Justice Issues 'Web Accessibility Guidance'," March 31, 2022

- "New York State Amends Its Workplace Anti-Discrimination and Anti-Harassment Laws," March 31, 2022
- "New York City Requires Private Sector Employees to Be Vaccinated by December 27," December 20, 2021
- "New York State Employers to Require Transparency in Electronic Monitoring," November 19, 2021
- "New Laws Passed in New Jersey Designed to Identify and Penalize Employers Who Misclassify Employees as Independent Contractors," September 13, 2021
- "New Jersey Governor Murphy Orders New COVID-19 Workplace Protocols," November 9, 2020
- "New Jersey Department of Labor Releases Posters for Employers to Utilize to Satisfy Employee Misclassification Posting Requirements," June 9, 2020
- "New Jersey Gives Employers a Break on New WARN Requirements Due to COVID-19," April 17, 2020
- "New York Targets Members of Out-of-State LLCs in New Wage Theft Bill," January 6, 2020
- "Department of Labor Issues Final Rule on Calculating the Regular Rate of Pay Under the Fair Labor Standards Act," January 2, 2020
- "New Jersey Bill Would Codify a Stricter Version of ABC Test for Determining Independent Contractor Status," November 14, 2019
- "New York State Legislature Enacts Sweeping Changes to Combat Sexual Harassment," June 24, 2019
- "New York City Council Passes Legislation Banning Marijuana Testing of Job Applicants," April 16, 2019
- "New Jersey Minimum Wage Set to Increase to \$15 Per Hour by 2024," February 12, 2019
- "New Jersey Department of Labor and Workforce Development Issues Proposed Regulations For the New Jersey Sick Leave Act," October 22, 2018
- "Upcoming Deadlines For New York City Employers: New York City Commission on Human Rights Publishes Poster and Fact Sheet on Sexual Harassment," August 17, 2018
- "New Jersey Enacts Paid Sick Leave Act," May 8, 2018
- "New Jersey Equal Pay Act Signed Into Law," May 2, 2018
- "The Right to Unplug: New York City Council Proposes Bill Which Would Allow Employees to Disconnect From Work After Normal Work Hours," March 27, 2018
- "New Jersey Proposes to Drastically Restrict the Use of Non-Compete Agreements," December 6, 2017
- "New Year, New Rules for Employers Doing Business in New Jersey in 2017," January 6, 2017
- "Seventh Circuit Holds Class Action Waivers are Unlawful and Unenforceable Creating a Circuit Split," June 8, 2016
- "New York State Minimum Wage Set to Increase to \$15 Per Hour," April 5, 2016
- "New Year, New Rules for Employers Doing Business in New Jersey," December 22, 2015
- "Second Circuit Finds EEOC Investigation Not Subject to Review," October 8, 2015
- "Second Circuit Holds: You Can't Always Get What You Want – As Long As Your Employer Gives You What You Need (An Effective Accommodation)," June 29, 2015
- "Supreme Court of New Jersey Adopts *Faragher/Ellerth* Affirmative Defense," March 18, 2015
- "Six Considerations For Employers Faced With The Ebola Virus Or Other Infectious Diseases," November 3, 2014

- "New York City Amends Its Human Rights Law to Extend Protection to Interns," May 13, 2014
- "Newark Becomes Second City in New Jersey to Require Mandatory Paid Sick Leave," March 7, 2014
- "Update: New York Department of Labor Issues Final Wage Deduction Regulations," November 1, 2013
- "Second Circuit Holds That The Fair Labor Standards Act Does Not Bar The Enforcement of Class Action Waivers," August 14, 2013
- "UPDATE: New York City Council Overrides Mayor Bloomberg's Veto And Enacts The Earned Sick Time Act Requiring Mandatory Paid Sick Leave," July 3, 2013
- "New York City Council Passes Act Requiring Mandatory Paid Sick Leave," May 15, 2013
- "E.D.N.Y. Judge Reverses Course: Rule 41 Stipulation of Voluntary Dismissal in FLSA Action Does Not Require Court Approval," April 4, 2013
- "Second Circuit Upholds Enforceability of Arbitration Agreements that Bar Title VII Class Actions, Finding that there is no Substantive Statutory Right to Pursue a Pattern-or-Practice Claim," March 22, 2013
- "Update: New Jersey Minimum Wage Bill Vetoed By Governor Christie," February 12, 2013
- "Payment Required: New York Court Finds No Violation Of New York Labor Law Section 193 Where Unpaid Interns Did Not Receive Wages From Employer," January 23, 2013
- "Ninth Circuit Finds Employment Agreement Ambiguous As To Whether An Employee's "Ideas" Were Assigned To Employer ", August 4, 2010

## **New York Commercial Division Round-Up Blog Posts**

- "Untimely Filing Of Motion To Dismiss Does Not Warrant Automatic Dismissal Where Motion Is Meritorious And Opposing Party Will Not Be Prejudiced", January 27, 2011
- "Commercial Division Provides a Reminder to Practitioners that Failing to Plead All Elements of a Breach of Contract Action Will Result in Dismissal," September 8, 2010

## **Media Mentions**

Sur La Table Gets Nod For \$89M Ch. 11 Sale To PE Firm  
*Law360*, 08.12.2020

Majesco's \$12 Million Acquisition of InsPro Technologies  
*Global Legal Chronicle*, 02.24.2020

FLIR Fires Up More M&A  
*The Deal*, 02.12.2019

NYC Bill Would Let Workers Take a Break From Calls, Emails  
*The Associated Press*, 05.18.2018

OK Sought For Deal In Olsen Twins' Co. Intern Wage Suit  
*Law360*, 03.09.2017

Can Employers Enforce Class-Action Waivers in Arbitration Agreements?  
*Society for Human Resource Management*, 06.16.2016

## Speaking Engagements

"Managing Infectious Diseases in the Workplace: Legal Requirements for Handling Infected, Exposed, or At-Risk Employees," C4CM, Center for Competitive Management Webinar, October 16, 2015

"Infectious Disease and the Workplace – Key Considerations for Employers," West LegalEdcenter, January 29, 2015

"Employee Social Media Use: Potential Liability for Employers Who Attempt to Regulate It and Reasonable Expectations for Employees," Bloomberg BNA Webinar, February 26, 2014

"Social Media, the First Amendment, and the NLRB: What Can Fashion Employers Do to Protect Their Brand and Designs?" New York, February 13, 2013

"Access Denied: Employee Social Media Use and Potential Liability for Employers Who Attempt to Monitor or Regulate It," Bloomberg BNA Webinar, August 23, 2012

## Events

Sheppard Mullin's Labor & Employment Law Spring Update  
The Future of Work Is Here Now  
Sheppard Mullin New York Office, 05.23.2023

Retail Compliance Bootcamp and Interactive Breakouts: Avoiding The Retail Apocalypse  
12.14.2017

Sheppard Mullin's Spring 2016 Labor & Employment Law Update  
06.22.2016

The Shifting Landscape of Pre-Employment Background Checks: New Laws and How to Avoid Liability  
Bloomberg BNA Webinar  
05.11.2016

2014 Labor & Employment Year In Review  
11.13.2014

## Podcasts & Webinars

Labor & Employment Update - The Future Of Work is Here Now  
05.23.2023

## Practices

Labor and Employment

Labor and Employment Litigation

Litigation

## Industries

Retail, Fashion & Beauty

## Education

J.D., Fordham University, 2006, *cum laude*

B.A., LeMoyne College, 2001, *cum laude*

## Clerkships

Interned for the Honorable Kevin T. Duffy, U.S. District Court for the Southern District of New York

## Admissions

New York

New Jersey

United States District Court for the Southern, Eastern, Western and Northern Districts of New York

United States District Court for the District of New Jersey