

Tracey Holmes Donesky

PARTNER

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With nearly 20 years of experience, particularly in the railroad industry, Tracey is an effective litigator, successfully defending claims for clients facing employment disputes at the federal, state and administrative levels.

Tracey also regularly counsels clients on all aspects of the employment relationship, employment policies, workplace investigations, wage and hour issues and helps guide clients through workplace matters to minimize the threat of litigation.

Clients look to Tracey for counsel and litigation defense on a wide variety of employment matters affecting railroads and other transportation-related entities, oil & gas, manufacturing and retail entities. Her litigation defense and counseling experience includes:

- Retaliation claims pursued under a broad spectrum of federal, state and local statutes including Title VII, ADA, ADEA, FMLA and a particular focus and experience on defending retaliation claims pursued in the railroad industry under the Federal Railroad Safety Act (FRSA)
- Discrimination, harassment, hostile work environment, failure to reasonably accommodate, and wrongful discharge claims
- Wage and hour claims, including defense of claims alleging violation of minimum wage, employee misclassification, tip

PRACTICES & INDUSTRIES

Labor, Employment & Benefits

Railroads

Transportation

Employment Litigation

Oil & Gas

Class Action

Trade Secret Litigation

Employment Investigations & Compliance

ADMISSIONS

Minnesota

U.S. District Court for the Western District of Michigan

U.S. District Court for the District of Minnesota

U.S. District Court for the District of North Dakota

U.S. Court of Appeals for the Eighth Circuit

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credit issues

- Non-compete, non-solicitation and non-disclosure claims
- Management and leadership training, including training on employee leaves and accommodation requests, pre-hiring practices, background investigations, and prohibited harassment and other offensive behavior in workplace training

With particular experience and knowledge in the railroad and transportation industries, Tracey guides clients with compliance and handles litigation when matters arise in state and federal courts and before agencies. She is a member of the American Short Line & Regional Railroad Association's (ASLRRRA) General Counsel Committee, where she serves as the designated representative for railroad OSHA whistleblower-related matters.

Tracey handles wage and hour claims and class actions, helping clients with classification determinations and Department of Labor audits. She also represents employers in hiring, discipline and medical leaves of absence, in addition to discrimination, noncompete and whistleblower claims.

Tracey helps employers and employees think differently about workplace relationships and investigations. She regularly leads workplace internal investigations for employers guiding them effectively and efficiently through a variety of situations.

EXPERIENCE

Successfully obtained on behalf of a Class I Railroad reversal and remand from the 8th Circuit Court of Appeals of a plaintiff-favorable decision wherein the Eighth Circuit ruled that the lower court committed reversible error by improperly applying the proper and governing legal standard under the Federal Railroad Safety Act (FRSA).

Successfully obtained Seventh Circuit Court of Appeals affirmance of District Court's Summary Judgment in defense of Class I Railroad's dismissal of employee who pursued claims of reverse gender discrimination and retaliation under the Federal

U.S. Court of Appeals for the Seventh Circuit

EDUCATION

University of Minnesota Law School, J.D.,
magna cum laude, 2000

- Order of the Coif
- *Minnesota Law Review*, Managing Editor, 1999-2000

University of Kentucky, B.A., *summa cum laude*, 1996

- Phi Beta Kappa
- Scholarship Member NCAA Division I Women's Golf Team, 1991-1995
- 1996 NCAA Walter Byers Post-Graduate Scholarship Recipient

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Railroad Safety Act (FRSA).

Successfully obtained Eighth Circuit Court of Appeals affirmance of Summary Judgment dismissing former employee's age discrimination claims under the Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act (MHRA).

Successfully obtained trial court victory before Administrative Law Judge for Department of Labor against retaliation claims asserted under the Federal Railroad Safety Act (FRSA) by former railroad conductor, later affirmed by the Administrative Review Board and Seventh Circuit Court of Appeals.

Successfully obtained reversal pursuant to Rule 23(f) of class certification of putative class of employees asserting minimum wage claims under federal and state law from Eighth Circuit Court of Appeals.

Successfully defended against Motion for Leave to Amend Complaint in wage and hour case seeking to amend complaint to include additional state law claims following opt-in period.

Successfully obtained summary judgment in defense of race retaliation claim pursued by former railroad conductor under Title VII.

Successfully obtained summary judgment in defense of claims challenging dismissal by former at-will employee under the Family Medical Leave Act (FMLA).

Successfully obtained summary judgment from U.S. District Court for Northern District of Illinois in defense of disability discrimination and retaliation claims under Americans with Disabilities Act (ADA).

Successfully obtained summary judgment from United States District Court of Minnesota in defense of age discrimination claims pursued under the Age Discrimination and Employment Act (ADEA) and other state law and common law claims challenging dismissal from probationary employment.

Successfully obtained summary judgment from Minnesota state court in defense of state law age discrimination and retaliation claims pursued by former at-will employee.

Successfully obtained summary judgment from United States District Court for Minnesota for Class I railroad in defense of retaliation claims pursued under the Federal Railroad Safety Act (FRSA).

Successfully obtained summary judgment on Federal Railroad Safety Act (FRSA) claim pursued by former employee in case of first impression with district court finding that a chiropractor is not a treating physician under the text or meaning of 49. U.S.C. 20109(c).

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RECOGNITIONS

Senior Fellow, Litigation Counsel of America

Selected to the 2024 edition of *Best Lawyers in America*®

Honored as an "Up & Coming Attorney" by *Minnesota Lawyer*, 2008

Selected for inclusion in *Super Lawyers*®-Rising Stars, 2004-2009 & 2012

Selected for inclusion in *Super Lawyers*, 2013-2019

Named a "future star" by *Benchmark Litigation*, 2012-2015, based on peer and client review

Local Litigation Star by *Benchmark Litigation*, 2022-2024

PROFESSIONAL & CIVIC ACTIVITIES

Federal Bar Association—Minnesota Chapter, Officer, Vice-President Legal Education, 2009-2011

Federal Bar Association—Minnesota Chapter, Officer, Annual Golf Tournament Committee, Chair, 2012-2013

Wage and Hour Defense Institute (WHDI), Board Member

Federal Practice Committee, Committee Member, 2008-2011

American Short Line & Regional Railroad Association (ASLRRA), General Counsel Committee

American Bar Association, FLSL Committee, Co-Chair of Equal Pay Act Subcommittee

NEWS

Stinson Attorneys Recognized in the 17th Edition of *Benchmark Litigation*

10.05.2023

175 Stinson Attorneys Selected to the 2024 *Best Lawyers in America* List

08.17.2023

Stinson Attorneys Named Litigation Stars by *Benchmark Litigation*

10.06.2022

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Donesky Appointed as Co-Chair to the Magistrate Judge Selection Panel

08.25.2022

Donesky, Kruse Share Advice for Handling Employment Claims in *SHALE* Magazine

08.16.2022

Tracey Holmes Donesky Featured by *Attorney at Law* Magazine

06.15.2022

Stinson Attorneys Named Litigation Stars by *Benchmark Litigation*

10.26.2021

SPEAKING ENGAGEMENTS

“10 Best Practices for Managing Employees with Mental Health Conditions,” Upper Midwest Employment Law Institute, May 2019

“FLSA Hot Topics,” Federal Labor Standards Legislation Committee Midwinter Meeting, February 2018

“Background Checks in Real Life – Dealing with Criminal Convictions and the Fair Credit Reporting Act,” 2014 Upper Midwest Employment Law Institute, May 2014

“Employee Screening Seminar,” 2014 ASLRRRA Conference, April 2014

Moderator, “Wage and Hour Bootcamp,” 7th Annual Labor and Employment Law Conference, November 2013

“WHDI Quarterly Update,” Wage & Hour Defense Institute, October 2013

“Call Center and Customer Contact Compliance Seminar: Employment Considerations and Avoiding Employment Litigation Risk,” Leonard, Street and Deinard, September 2013

“Arrests, Convictions, Background Checks and Other Pre-Hiring Issues,” Employment Practices, Documents & Contracts, MSBA, September 2013

“Wage and Hour Issues,” 2013 Upper Midwest Employment Law Institute, May 2013

“Arrests, Convictions and Background Checks: Conducting Lawful Pre-Hire Screening and Other Pre-Hire Issues,” 2013 Upper Midwest Employment Law Institute, May 2013

“OSHA Whistleblower Update,” ASLRRRA Annual Conference, Atlanta, Georgia, April 2013

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"Hiring Practices," ASLRRA Finance and Legal Administration Seminar, Kansas City, Missouri, November 2012

"Hiring and Pre-Hiring Issues," ASLRRA Central and Pacific Regional Meeting, Minneapolis, Minnesota, September 2012

Cannabis Facts and Changing Laws: A Minnesota Series - Part 1
Conversation with Cannabis Legislation Author and Employment Law Implications
Stinson LLP, 09.27.2023

New Challenges for HR in 2023 – Minneapolis
02.07.2023

PUBLICATIONS

Contributing Author, *FMLA Subcommittee Midwinter Report of 2014 Cases*

"Important OSHA Whistleblower (20109) Updates," *Legal Tracks*, October 2014

Contributing Author, *ABA BNA FMLA Treatise 2014*

Contributing Author, *Minnesota Wage and Hour Treatise Update 2014*

"OSHA whistleblower claims: No signs of slowing," *Railway Age*, April 2013

Co-author, 2013 *Mid-Winter FMLA Report*, American Bar Association, February 2013

Chapter Author for *Wage and Hour Laws - A State by State Survey 2012 Supplement* (covering Minnesota wage and hour laws)

"Starbucks' Tip Pool Held Unlawful In Massachusetts-Uncertain in New York," *Wage & Hour Defense Institute*, December 2012

"Call to Discuss Wage Deduction That "Ended Nicely" Not a Protected Complaint Under the FLSA," *Wage & Hour Defense Institute*, December 2012

Trend of Nixing Employer-Friendly "Ultimate Employment Decision" Standard for Title VII Claims Continues
09.06.2023

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