



Robert C. Whitaker, Jr.

Partner



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Robert C. Whitaker, Jr. is a partner in the Labor & Employment, Construction and Intellectual Property Practices. He is Chair of the Firm's Labor & Employment Department and Leader of the Military Law Practice, and formerly served as Chair of the Hiring Committee. Mr. Whitaker focuses his practice on representing private employers in all aspects of state and federal labor and employment law. Mr. Whitaker regularly defends employers before state and federal agencies and in the courts regarding claims under Title VII, Age Discrimination in Employment Act, Americans with Disabilities Act, Fair Labor Standards Act, Uniformed Services Employment and Reemployment Rights Act, New York State Human Rights Law and all other New York state labor laws. He also has experience litigating other employment disputes regarding employment contracts, including enforcement of non-compete agreements and other restrictive covenants. In addition, he regularly enforces copyrights in federal court on behalf of national and international musical composers, authors and lyricists.

Prior to joining the Firm, Mr. Whitaker served as a Defense Attorney for the Navy Judge Advocate General's Corps (Navy JAG Corps), representing active duty military personnel in military federal courts throughout the southeastern United States. He also served as Deputy Staff Judge Advocate and Prosecutor for the Commanding General of the 2nd Marine Logistics Group in Al Anbar, Iraq. Since joining the Firm, Mr. Whitaker has continued to serve in the Navy Reserve where he holds the rank of Lieutenant Commander. In this capacity, Mr. Whitaker has served as an instructor at the Naval Justice School teaching newly commissioned attorneys how to best litigate administrative separation boards and perform legal assistance services. Mr. Whitaker continues to represent clients in matters involving Veteran Benefits, Administrative Separation Boards, Courts-Martial, Boards of Inquiry, Non-Judicial Punishment (Article 15s) and correction of military records, including discharge upgrades.

PRACTICE AREAS

- Labor & Employment
- Intellectual Property
- Construction
- Military
- Nonprofit Governance & Tax-Exempt Organizations

REPRESENTATIVE MATTERS

- Successfully defended defense jury verdict and partial summary judgment on appeal to the Second Circuit, affirming dismissal of all claims of employment discrimination and retaliation (Second Circuit, 2018)

- Obtained summary judgment for employer, resulting in dismissal of state and federal law claims of age and disability discrimination (U.S. District Court, Northern District of New York 2017).
- Obtained defense jury verdict for large corporate client dismissing all claims of retaliation by a former employee under the ADA, ADEA and NYS Human Rights Law (U.S. District Court, Northern District of New York 2017).
- Obtained full dismissal and defeated subsequent appeal on behalf of the State of New York in a multi-million dollar USERRA and NY Military Law class action (NYS Supreme Court, 2014, aff'd Third Dep't 2016).
- Obtained summary judgment for employer, resulting in dismissal of all discrimination claims under the ADA and Title VII (U.S. District Court, Northern District of New York 2016).
- Obtained a favorable jury verdict as co-counsel for a pharmacist who was unlawfully discriminated and retaliated against by his employer based on a disability. The jury awarded the client just over \$2.6 million in total damages (U.S. District Court, Northern District of New York 2015).
- Obtained summary judgment declaring an employment agreement and the related restrictive covenants void and unenforceable as a matter of law, allowing a nurse practitioner to work for a new employer (NYS Supreme Court, 2015).
- Successfully defended large manufacturer against action seeking to void various restrictive covenants in employment agreement (NYS Supreme Court, 2014).
- Obtained a full dismissal of discrimination claims based on pregnancy and disability following an administrative trial before a New York State Division of Human Rights Administrative Law Judge (2013).
- Obtained a favorable jury verdict as co-counsel for a senior administrator of a large police department against various claims of discrimination and retaliation pursuant to the ADA, Title VII, First Amendment § 1983 and New York State Human Rights Law (U.S. District Court, Northern District of New York 2010).
- Obtained a favorable jury verdict against the State of New York for a pro se plaintiff in a pro bono matter, based on claims of First Amendment retaliation and Eighth Amendment unlawful conditions of confinement (U.S. District Court, Northern District of New York 2010).
- Obtained a full dismissal of discrimination claims, based on gender and disability following an administrative trial before a New York State Division of Human Rights Administrative Law Judge (2009).
- Obtained numerous findings of No Probable Cause for employers against charges of retaliation and discrimination, based on gender, race, religion and disability before the New York State Division of Human Rights as well as administrative dismissals by the EEOC.
- Successfully represented various employers during investigations by the New York State Department of Labor for alleged wage and hour violations, resulting in either closure of the investigation without further action or favorable settlements.
- Successfully represented various employers in numerous hearings and appeals before the New York State Unemployment Insurance Appeal Board, resulting in the denial of unemployment benefits to former employees.
- Obtained numerous dismissals for various employers against charges of workers compensation discrimination following administrative hearings before the New York State Workers Compensation Board.
- Obtained multiple judgments (including reimbursement of attorney's fees), permanent injunctions and favorable settlements for numerous national and international artists and musicians in federal court for copyright infringement pursuant to the Copyright Act.
- Successfully led a class action petition to a Navy BCNR, resulting in the retroactive promotion and back pay of 30 Naval Officers.
- Successfully petitioned a Navy BCNR, resulting in a full reinstatement of lifetime pension benefits, including back pay, for the surviving widow of a veteran.
- See the [Military Law Practice](#) page for more information on Mr. Whitaker's representation of active military personnel and veterans.

REPORTED DECISIONS

- *Benson v. Family Dollar Operations, Inc.*, 2018 WL 5919905 (2d Cir. 2018) (Affirming jury defense verdict and partial summary judgment dismissing all discrimination and retaliation claims under ADA, ADEA and NYSHRL).

- *Matter of Kennedy*, 156 A.D.3d 1105 (3d Dep't 2017) (Affirming denial of unemployment insurance benefits).
- *Andrews v. State of New York et al.*, 138 A.D.3d 1297 (3d Dep't 2016) (Affirming dismissal of USERRA class action).
- *Welsh v. Rome Memorial Hosp.*, 2016 WL 6603216 (N.D.N.Y. Nov. 8, 2016) (Granting summary judgment for the employer and dismissing all claims under the ADA and Title VII).
- *Matter of Megan Jock v. Fastrac Markets, LLC*, Case No. 10147787 (New York State Division of Human Rights 2013) (Dismissing claim of unlawful discrimination based on pregnancy and related medical conditions and claim for failure to provide a reasonable accommodation following an evidentiary hearing before an Administrative Law Judge).
- New York State Unemployment Insurance Appeal Board, Case No. 569724 (April 9, 2013) (Reversing Administrative Law Judge's decision and denying former employee benefits because the employee was terminated for disqualifying misconduct and finding the employee made a willful misrepresentation while applying for benefits).
- New York State Unemployment Insurance Appeal Board, Case No. 568220 (March 26, 2013) (Reversing Administrative Law Judge's decision and denying former employee benefits where employee refused a valid offer of reemployment without good cause).
- New York State Unemployment Insurance Appeal Board, Case No. 567410 (February 21, 2013) (Reversing Administrative Law Judge's decision and denying former employee benefits because the employee quit without good cause and failed to utilize the union's grievance procedure).
- *Granite Music Corp. v. Center Street Smoke House, Inc.*, 786 F.Supp.2d 716 (W.D.N.Y. 2011) (Awarding client statutory damages of \$10,000 per copyright violation, permanent injunction and attorney's fees.)
- *Michelle Sullivan v. Central New York Weight Loss, LLC*, Case No. 10125679 (New York State Division of Human Rights 2009) (Dismissing claims of unlawful discrimination based on gender and disability following an evidentiary hearing before an Administrative Law Judge).

RECOGNITIONS AND HONORS

- Rated, AV Preeminent, Martindale-Hubbell
- Selected, Upstate New York *Super Lawyers* (2017-2018)
- Selected, Upstate New York *Super Lawyers* - Rising Star (2013-2016)
- Recipient, Syracuse Vet Center Award (2013)
- Recipient, Robert J. Connelly Award for Excellence in Trial Advocacy

PROFESSIONAL AND COMMUNITY ACTIVITIES

- Member, Clear Path for Veterans Advisory Board
- Co-Chair, Onondaga County Bar Association Veterans' Rights & Military Law Section
- Member, Cornell University Cooperative Extension of Onondaga County
- Member, Onondaga County Volunteer Lawyers Project
- Member, Syracuse City Court Small Claims Arbitration Program
- Member, New York State Bar Association
- Member, Onondaga County Bar Association
- Member, Northern District of New York Federal Court Bar Association Pro Bono Committee
- Member, Northern District of New York Federal Court Bar Association

SPEAKING ENGAGEMENTS

- Tompkins County SHRM, "Disability Rules Under the ADA & NYSHRL" (November 2018)
- Labor & Employment Sexual Harassment Policy and Training Session (November 2018)
- Recently Enacted Sexual Harassment Laws (September 2018)
- 14th Annual Labor & Employment Law Symposium (September 2018)
- New York State Harassment Laws – "What Employers Should Know" (September 2018)
- New York State Sexual Harassment Laws Update (July 2018)
- Hancock Estabrook Sixth Annual Advisors to Small Business Symposium (June 2018)
- Labor & Employment Breakfast Club, "Recent Changes to NYS Sexual Harassment Laws" (June 2018)
- Lorman Educational Services, "Unemployment Insurance 101: Assessing and Responding to Claims for U.I. Benefits" (November 2011)
- Higher Education Legal Update Conference, "Social Media Use on Campus and in the Workplace" (March 2011)
- Lorman Educational Services, "Fair Labor Standards Act" (February 2011)
- Mohawk Valley SHRM, "Labor & Employment Law Update: COBRA Updates Under the American Recovery & Reinvestment Act" (March 2009)

PRESS AND PUBLICATIONS

- ["What Employers Need to Know About Recent Changes to New York's Sexual-Harassment Laws"](#), *Central New York Business Journal*, September 2018
- ["The Importance of Making Your Website Compliant with the ADA"](#), *Central New York Business Journal*, November 2017
- "The First Amendment Fallacy: Colin Kaepernick's 'Constitutional Right' to Protest", *law.com*, October 2016
- ["Effects of State Wage Board's Move to Raise Fast Food Minimum Wage"](#), *Central New York Business Journal*, August 2015
- "Firm Ordered to Pay Toward Insurance of Contract Lawyer", *New York Law Journal*, September 2014
- ["Fair Play Act Targets Commercial Trucking Industry"](#), *New York Law Journal*, July 2014
- ["Employee and Independent Contractor Misclassification"](#), *Hancock Estabrook Newsletter*, Spring 2014
- ["Will 2014 Unemployment-Insurance Reforms Save Employers Money?"](#), *Central New York Business Journal*, February 2014
- ["Expanded Rights for Military Families Under FMLA"](#), *The Greater Watertown North Country Chamber of Commerce June/July Newsletter*
- ["Hancock Estabrook News Alert: Expanded Rights for Military Families Under FMLA"](#), April 2013
- ["Veteran's Voice: What Federal Laws Protect Veterans"](#), *Clear Path for Veterans and WSyr-TV NewsChannel 9*
- "Employers Need to be Ready for the Fair Play Act", *Central New York Business Journal*, March 2011
- Co-Author, "Supreme Court's Age Discrimination Ruling Affects Employers", *Central New York Business Journal*, July 2009

EDUCATION

- University at Buffalo Law School, J.D., 2005
 - *Buffalo Law Review*
- State University of New York College at Oswego, B.A., *cum laude*, 2002

ADMISSIONS

- Military Trial Courts

- New York
- United States Court of Appeals (Second Circuit)
- United States District Court (NDNY)
- United States District Court (WDNY)
- United States Supreme Court