



## Howard M. Miller

### Member

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## Profile

**Howard's practice emphasizes employment law and litigation.**

He is a frequent lecturer on, among other topics, non-compete agreements, protection of trade secrets and harassment.

## Honors & Affiliations

- Listed in:
  - *The Best Lawyers in America*®, Education Law, 2012-2023 (listed for 10 years)
  - *New York Super Lawyers 2022*®, Employment & Labor (listed for 10 years)
- Benchmark Litigation Labor & Employment Star, 2021
- New York State Bar Association
- Nassau County Bar Association
- National Association of College and University Attorneys
- Member, Law Review
- St. Thomas More Scholar

## Representative Presentations

- Communicating What Matters Now! First Amendment Rights in School, 2023 Annual School Law Conference, The Nassau Academy of Law, March 24, 2023
- Recent Court Decisions about Which Every Public Employer Should Know, Association of Towns, February 20, 2023, New York, NY.
- Panelist, "Communicating What Matters Now! First Amendment Rights in School," 2023 Annual School Law Conference, Nassau and Suffolk Academies of Law and the Education Law Committees of the Nassau and Suffolk County Bar Associations, Oakdale, New York, March 24, 2023
- Employee Speech and the First Amendment, New York State School Board Association's 26th Annual Pre-Convention School Law Seminar, October 27, 2022
- First Amendment in the Workplace: Managing Employee Speech in Polarizing Times, 2022 Fall Legal Conference, The State University of New York, October 13, 2022

## Education

- St. John's University School of Law (J.D. 1990)
- State University of New York at Albany (B.S., *cum laude*, 1986)

## Bar/Court Admissions

- New York
- Connecticut
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Northern District of New York
- U.S. District Court for the Southern District of New York

## Practices

- School Law
- Municipalities
- Higher Education
- Labor and Employment
- Health Care

- Staff Speech – *Kennedy* and its Impact on *Garcetti*, Free Exercise Standards, Counsel of School Attorneys - 2022 Fall School Law Seminar, October 11, 2022
- Recent Court Decisions About Which Every Public Employer Should Know, 47th Annual Conference, New York State Public Employer Labor Relations Association, Saratoga Springs, NY, July 11, 2022
- A Gold Mine of Recent Court Decisions - What Public Employers Need to Know, 51st Annual Training Conference, National Public Employer Labor Relations Association, in Austin, Texas, June 29, 2022
- Panelist, "Deal or No Deal - Disciplinary Proceedings in Cyberspace," 2022 Annual School Law Conference, Education Law Committees of Suffolk and Nassau County Bar Associations, April 8, 2022
- Staff Political Speech in Polarizing Times, Council of School Attorneys (COSA) Spring School Law Seminar in San Diego, CA, April 2, 2022
- Free Speech in the Era of Racial and Political Polarization, National PELRA, New Orleans, LA, November 9, 2021
- Student First Amendment Rights – An Update from the Supreme Court, NYSSBA Pre-Convention Law Conference, NYC, October 24, 2021
- Help Wanted: Managing Through the Current Labor Staffing Shortage, Bond Webinar, October 19, 2021
- Operating in a COVID-19 Environment, Long Island Association of School Personnel Administrators, Webinar, October 7, 2021
- Free Speech in the Era of Racial and Racial Political Polarization, New York State Public Employer Labor Relations Association, Saratoga Springs, NY, September 30, 2021
- The Biden Administration's Employment Law Initiatives, Association of Independent Research Institutes, Webinar, September 13, 2021
- Helping Students Transition Back into an In-person School Environment, NYSSBA Summer Law Conference, Melville, NY, July 8, 2021
- COVID-19 - An Overview of Lessons Learned, NYSSBA Pre-Convention Law School Seminar, October 21, 2020
- COVID-19 Labor Issues as Staff Return to Work, Long Island Association of School Personnel Administrators, Part 1: July 29, 2020; Part 2: August 5, 2020
- Handling Mental Health Issues in School, National Business Institute, May 8, 2020
- Panel Member, The "Ayes" Have It: Legislative Update No. 1/An Overview of New Laws with a Focus on Employment Issues, 2019 School Law Conference, Nassau County Bar Association, December 6, 2019
- Sweeping Changes to New York Human Rights Law, Association of Towns 2020 Annual Meeting & Training School, New York, NY, February 17, 2020
- The Varying Landscape of Employment Discrimination, New York State School Boards Association, Rochester, NY, October 26, 2019
- Sweeping Changes to New York Human Rights Law: Employers Must Prepare Now, Bond, Schoeneck & King Webinar, August 29, 2019
- Child Victims Act: Impacts on the Insurance Industry, Bond, Schoeneck & King Webinar, July 23, 2019

- Sexual Harassment Litigation Strategies, County Attorney's Association of New York, Cooperstown, NY, May 20, 2019
- Solving the Mental Health Rubik's Cube in the Modern and Maddening Workplace, Long Island Association of School Personnel Administrators, March 6, 2019
- Sexual Harassment in the Era of Viral News, National Business Officers Association, February 7, 2019
- Holiday Season Postscript: An Update on Noncompete Agreements, The Journal of the Nassau County Bar Association, January 2019
- Switching to Offense in Employment Cases, Long Island Chapter Labor and Employment Relations Association, December 12, 2018
- Panel Member, How to Protect Your School District in the Age of the "Me Too" Movement, Annual School Law Conference, December 7, 2018
- Sexual Harassment in the Viral News World, New York State School Boards Association, Sheraton New York Times Square Hotel, October 26, 2018
- Switching to Offense in Employment Cases, New York State Bar Association Labor & Employment Law Section, Montreal, Quebec, Canada, October 12, 2018
- Student Activism: The Past Visits the Present Again, New York State School Boards Association, Plainview, NY, July 26, 2018
- Preventing Sexual Harassment in the Workplace, New York State Public Employer Labor Relations Association, Inc. (NYSPELRA), Saratoga Springs, NY, July 19, 2018
- Managing Employees in the Digital Era, The Accounting & Finance Show NY, Javits Center, New York, NY, July 11, 2018
- Social Media Investigations in the Workplace, County Attorneys' Association of the State of New York Annual Meeting, The Otesaga Hotel, Cooperstown, NY, May 21, 2018
- Title IX, Long Island Association of School Personnel Administrators, April 25, 2018
- Interviewee, Tower Talk Business Radio, February 23, 2018
- Panel Member, "Express Yourself!" - Standard for Disciplining Staff and Students for Exercising Their Freedom of Expression - Mock 3020-a Proceeding and Legal Analysis, 2017 Annual School Law Conference, December 8, 2017
- Religion in the Public Schools, New York State School Boards Association, October 13, 2017
- Hot Topics in Higher Education and Technology & School Policy~A Panel Discussion, Mid-Hudson School Study Council, Monroe-Woodbury High School, Central Valley, New York, August 4, 2017
- Sections 3020-a and 3020-b – A Timely Update, New York State School Boards Association, July 27, 2017
- Labor & Employment Law – What's Hot, What's New, What's Next, New York State Industries for the Disabled, October 6, 2017
- Aggressive Litigation Techniques in Defending Employment Cases, Bond's In-House CLE Series, February 27, 2017
- Digital Fingerprints: The Legal Double-Edged Swords of Social Media and Email, Long Island Association of School Personnel Administrators Event, December 1,

2016

- Hot Topics in Public Sector Employment Law, Association of Towns of the State of New York 2016 Personnel Management School, November 18, 2016
- Student Use of Heroin and Other Drugs – The Legal Issues and More, New York State School Boards Association, October 27, 2016
- Labor & Employment Law Developments and What They Mean for Your Agency, New York State Industries for the Disabled, September 8, 2016
- Investigations & Student Rights Relative to Social Media, Mid-Hudson School Study Council, August 5, 2016
- Litigating and Defending Retaliation Claims: Overcoming the Complex Challenges of These Claims and Pitfalls to Avoid, American Conference Institute 8th Annual Forum on Defending and Managing Employment Discrimination Litigation, July 28, 2016
- Transgender Individuals in the Schools: Lingered Issues, New York State School Boards Association, July 21, 2016
- First Amendment Claims and Employer Counter-Claims, New York State Public Employer Labor Relations Association, July 20, 2016
- Guidance on Transgender and Gender Nonconforming Students, Mid-Hudson Catskill Council of Superintendents, April 12, 2016
- Public Education and the Law – The New Frontier: From Debates over Implementation of the Common Core to Student Opt-Outs of Standardized Testing, as well as the Rights of Transgender Individuals in the Schools – Where Will it End?, New York State Bar Association, Committee on Law, Youth & Citizenship, January 27, 2016
- Transgender Students and Employees, Nassau and Suffolk Academies of Law, School Law Conference, December 14, 2015
- Transgender Individuals in the Schools – Lingered Issues, New York State School Boards Association, October 18, 2015
- Update on Age Discrimination Litigation Trends: The Latest Class Action Developments, Guidance on Wrongful Reduction in Force Claims, and Practical Solutions for Overcoming the Most Common Challenges Employers are Now Facing in the Age Discrimination Landscape, American Conference Institute's 7th Annual Forum on Defending and Managing Employment Discrimination, July 27, 2015
- The New APPR – What Does It All Mean?, New York State School Boards Association Summer Law Conference, July 23, 2015
- §3020-a Proceedings in the Age of APPR, New York State School Boards Association, January 14, 2015
- Title IX, Transgender and Inter-Scholastic Sports, Nassau and Suffolk Academies of Law, School Law Conference, December 8, 2014
- Social Media in the Schools – The Legal v. Practical Issues, New York State School Boards Association, October 27, 2014
- Social Media, New York State Association of School Personnel Administrators, October 20, 2014
- Big Brother is Watching...But is it Legal? A Review of Current Issues Relating to Background Checks - Panelist, New York State Bar Association, Labor &

Employment Law Section, Fall Meeting, September 13, 2014

- Religious Discrimination, American Conference Institute, August 1, 2014
- Section 3020-a Proceedings in the Age of APPR, New York State School Boards Association, July 24, 2014
- Legal Update for School Stakeholders, Mid-Hudson School Study Council, April 10, 2014
- The Changing Face of School Athletics, New York State School Boards Association, January 9, 2014
- What Every School Board member Should Know About Litigation, New York State School Boards Association, October 26, 2013
- Sexual Harassment Involving Faculty Under Title IX, Touro College Jacob D. Fuchsberg Law Center, April 5, 2013

## Representative Publications

- "Don't Let Your Office Become 'The Office'," *Long Island Business News*, June 26, 2020
- "Can the Wisdom of a Guns N' Roses Song Help Us Avoid a Retaliation Claim?," *New York Law Journal*, November 1, 2019
- "What Employers can do About Employee Activism," *Long Island Business News*, November 1, 2019
- "Applying Martial Arts Philosophy to Employment Law," *Long Island Business News*, September 13, 2019
- Quoted in "The Reviews are In," *Long Island Business News*, September 13, 2019
- The Sound of Silence: Seventh Circuit Holds That Undocumented Misconduct is Still Misconduct, *JD Supra*, August 6, 2019
- Employment Law Through the Philosophy of a Martial Arts Practitioner, *JD Supra*, July 15, 2019
- An Old "SNL" Skit, A New Court Decision, and How Rumors Can Lead to Sexual Harassment Liability, *JD Supra*, March 6, 2019
- Co-Author, *2019 Chambers USA Regional Employment Guide*, New York Chapter
- Immigration and Related Foreign Workers, Contributing Author, *Chambers and Partners*, October 2018
- Dr. Dolittle and the Faithless Servant Doctrine in 2018 (So Far), *New York Labor and Employment Law Report*, August 2018, also published in *JD Supra*, August 21, 2018
- Class action waivers - good for business or bad for employees?, *Long Island Business News*, August 2018
- "Litigation Over The Flu Shot: A New Symptom Of Flu Season," *Law360*, February 23, 2018
- "The Faithless Servant Doctrine: An Olden Law for Modern Times," *Nassau Lawyer*, January 2018
- "'Brute Reason' or Lack of Nuance: Seventh Circuit's Twin Holdings That a Long Term Leave is Not a Reasonable Accommodation May...," *JD Supra*, December

1, 2017

- Quoted in "Ignore at your own peril," *Long Island Business News*, November 17, 2017
- "Ships Passing in the Night: The First Amendment and the Employee Grievance," *Nassau Lawyer*, July/August 2017
- "Adding Inevitability to the Often Disfavored Inevitable Disclosure Doctrine," *New York Labor and Employment Law Report*, April 27, 2017
- "A 'Fair and Balanced' Look at a Salary Claw-Back Against an Alleged Serial Sexual Harasser," *New York Labor and Employment Law Report*, April 20, 2017
- "Federal Appeals Court Rules That Transgender Students Can Use Restroom of Choice," *JD Supra*, June 1, 2017
- "Adding Inevitability to the Often Disfavored Inevitable Disclosure Doctrine," *JD Supra*, May 1, 2017
- "A 'Fair and Balanced' Look at a Salary Claw-Back Against an Alleged Serial Sexual Harasser," *JD Supra*, April 21, 2017
- Quoted in "Suits and Armour: Top 5 Reasons Employers Are Sued by Their Workers, and How to Cut Your Risk," *Long Island Business News*, August 15, 2016
- "Employment Law's "Hulk"-Like Superhero — The Faithless Servant Doctrine — Just Got Stronger," *New York Labor and Employment Law Report*, June 7, 2016, also published in *JD Supra*, June 8, 2016
- "How Would A Noncompete Hold in The 'Star Wars' Universe?," *New York Labor & Employment Law Report*, February 25, 2016
- "Privilege Issues in the Media Firestorm," *Higher Education Law Report*, February 3, 2016, also published in *JD Supra*, February 4, 2016
- "'Cat's Paw' Liability in faculty Decision-Making," *Higher Education Law Report*, January 8, 2016, also published in *JD Supra*, January 11, 2016
- "Lloyd Dobler's View of Job Responsibilities Can't Defeat Garcetti Defense," *New York Labor & Employment Law Report*, December 19, 2015, also published in *JD Supra*, December 10, 2015
- "School Districts: New Continuing Education and Registration Requirements Still on the Horizon for 2016-2017," *JD Supra*, November 5, 2015
- "Employee's "Trick" Results in a Halloween Bag of Rocks From the Jury," *New York Labor and Employment Law Report*, October 15, 2015, also published in *JD Supra*, October 16, 2015
- "School Districts: Changes to APPR And Teacher Tenure," *JD Supra*, April 17, 2015
- "Pooh Corner and a Zen Approach to Employment Law," *New York Labor & Employment Law Report*, March 2015, also published in *JD Supra*, March 27, 2015
- "A Labor and Employment Audit of Santa's Workshop," *New York Labor & Employment Law Report*, November 2014, also published in *JD Supra*, November 13, 2014
- "Sun Tzu – And the Art of Defending an Employment Discrimination Claim," *New York Labor & Employment Law Report*, August 2014, also published in *JD Supra*, August 14, 2014

- Howard M. Miller, Louis P. DiLorenzo and Christopher T. Kurtz, "Striking Out A-Rod: The Faithless Servant Doctrine," *Law360*, February 14, 2014, also published in *JD Supra*, February 18, 2014
- "When Complaining About "Everything" Defeats A Retaliation Claim," *Bond Higher Education Law Report Blog*, January 31, 2014

### Other Activities

- *Long Island Business News*, 2017 Leadership in Law Award