



## Katherine S. McClung

### Member

kmcclung@bsk.com  
350 Linden Oaks  
Third Floor  
Rochester, NY 14625-2825  
(585) 362-4703  
(585) 362-4773 fax

600 Third Avenue, 22nd Fl  
New York, NY 10016-1915  
(917) 262-2518

### Profile

**Kate is the Deputy Co-Chair of the Labor and Employment group and the Co-Chair of the Class and Collective Action practice. Kate regularly handles class and collective actions, as well as individual litigation, in state and federal courts and administrative claims before state and federal government agencies. She has handled a wide variety of legal claims, including discrimination, harassment, and retaliation (including whistleblower) claims, wage and hour claims, restrictive covenant disputes, breach of employment or commission agreement claims, as well as various tort claims (e.g., defamation, intentional or negligent infliction of emotional distress, negligence, malicious prosecution, false imprisonment, assault, battery, and prima facie tort).**

#### **Kate's recent court cases include the following:**

- Obtained the dismissal of age, disability, sex, and national origin discrimination claims under Title VII, the Age Discrimination in Employment Age, and the Americans with Disabilities Act for a college and individual defendants in federal court
- Obtained the dismissal of disability discrimination claims under the Americans with Disabilities Act for a healthcare employer in federal court
- Obtained the dismissal of retaliation claims under Title VII and New York State Human Rights Law for a university in federal court
- Obtained the dismissal of claims for Section 75-b retaliation, negligent hiring and retention, and intentional infliction of emotional distress for municipal employer in state court
- Obtained the dismissal of claims for defamation, malicious prosecution, intentional infliction of emotional distress, and negligent infliction of emotional distress against a retail employer
- Obtained the dismissal of a discrimination claim based on failure to promote for an university in federal court
- Obtained the dismissal of a Section 1983 claim for a municipal employer in federal court
- Obtained the dismissal of discrimination and retaliation claims under Title VII for a health care employer in federal court

### Education

- New York University School of Law (J.D. 2004)
- University of Rochester (B.A. 2000)

### Bar/Court Admissions

- New York
- 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
- U.S. District Court for the Western District of New York

### Practices

- Manufacturing
- Labor and Employment
- Hospitality and Tourism
- Litigation
- Class and Collective Action Litigation

- Obtained the partial dismissal of spread-of-hours claims for a health care employer in state court
- Obtained the dismissal of Section 1983, negligence, false imprisonment, sexual harassment and whistleblower retaliation claims against a school district and obtained sanctions from plaintiff's counsel for filing a frivolous complaint
- Obtained the dismissal of harassment claims under the New York State Human Rights Law for a college in state court
- Successfully settled a putative class action on an individual basis involving claims for overtime, minimum wage, spread-of-hours pay, and wage statement penalties pursuant to the Fair Labor Standards Act and the New York Labor Law for a service company in federal court
- Obtained summary judgment on a restrictive covenant claim for a manufacturing company in state court
- Successfully settled a class action involving tip credit and banquet service charge claims for a hospitality employer in state court
- Obtained the dismissal of employment claims for a Canadian company on personal jurisdiction grounds in federal court
- Successfully settled a collective action for overtime claims (including meal breaks) under the Fair Labor Standards Act for a school district in federal court
- Obtained the dismissal of discrimination claims under Title VII of the Civil Rights Act and the Americans with Disabilities Act for a college in federal court
- Successfully settled a class action for meal break and overtime claims under the Fair Labor Standards Act and the New York Labor Law for a health care employer in federal court
- Obtained summary judgment on a claim arising out of a collective bargaining agreement for a manufacturing company in federal court
- Successfully settled a putative class action on an individual basis involving overtime claims under the New York Labor Law for a retail company in state court
- Obtained the denial of class certification of claims under the New York Labor Law (including the Wage Theft Prevention Act) and the Wage Parity Act for a health care employer in federal court
- Obtained the dismissal of claims for sexual harassment, intentional infliction of emotional distress, negligence and Section 740 whistleblower retaliation for a school district in state court
- Successfully settled a class action involving claims for banquet service charges and uniform maintenance pay under the New York Labor Law for a hospitality employer in state court
- Obtained the dismissal of discrimination claims under Title VII of the Civil Rights Act for a hospitality employer in federal court
- Obtained the dismissal of claims for uniform maintenance pay under the Fair Labor Standards Act for a school district in federal court
- Successfully settled a putative class action on an individual basis involving claims for banquet service charges, tip credits, pay notice penalties, and wage statement penalties pursuant to the Fair Labor Standards Act and the New York Labor Law for a hospitality employer in federal court

- Obtained the dismissal of Wage Theft Prevention Act claims for a hospitality employer in federal court
- Successfully settled a class action for claims involving banquet service charges under the New York Labor Law for a hospitality employer in state court
- Obtained affirmance of the dismissal of discrimination claims under Title VII of the Civil Rights Act for a manufacturing company in federal court
- Successfully settled a putative class action on an individual basis involving claims for minimum wage, overtime, spread-of-hours pay, gratuities, pay notice penalties, wage statement penalties, and uniform maintenance pay under the Fair Labor Standards Act and the New York Labor Law for a hospitality employer in state court
- Obtained the dismissal of retaliation claims under Title VII of the Civil Rights Act and the Equal Pay Act for a manufacturing company in federal court
- Obtained significant limitations to a conditionally certified collective action for overtime claims under the Fair Labor Standards Act for a marketing company in federal court
- Obtained the dismissal of claims for assault, battery, intentional infliction of emotional distress, and Section 740 whistleblower retaliation for a retail employer in state court
- Obtained the dismissal of discrimination claims pursuant to Title VII of the Civil Rights Act and the Equal Pay Act for a health care employer in federal court
- Obtained the dismissal of New York Labor Law claims and a prima facie tort claim for a health care employer in state court
- Obtained the dismissal of discrimination claims under Title VII of the Civil Rights Act and the Age Discrimination in Employment Act for a retail employer in federal court

## Honors & Affiliations

- Listed in:
  - *The Best Lawyers in America*®, Employment Law - Management; Labor Law - Management; Litigation - Labor and Employment, 2019-2025 (listed for more than 5 years)
  - *New York Super Lawyers*®, Employment & Labor, 2018-2024
    - Upstate New York Rising Star, Employment & Labor, 2015
  - *The Daily Record*, Power 20 List, Labor and Employment Law, 2022-2024
- ATHENA International Young Professional Award Finalist, Greater Rochester Chamber of Commerce, 2022
- Employment Law Trailblazer Award, *National Law Journal*, 2020
  - One of only 25 attorneys selected nationwide for this award
- Excellence in Law: Top Women in Law, *The Daily Record*, 2020
- Women of Excellence, *Rochester Business Journal*, 2018
- New York State Bar Association, Empire State Counsel Honoree, 2013-2015
- Forty Under 40 Award, *Rochester Business Journal*, 2014

- Skadden Distinguished Pro Bono Publico Service Award, 2009
- Women's Bar Association of the State of New York, Rochester Delegate, 2014-2016
- Greater Rochester Association for Women Attorneys, Board of Directors, 2014-2016; Chair of the Women's Connections Committee, 2018-2019
- Monroe County Bar Association
- New York State Bar Association

## Representative Publications

- Quoted in "#MeToo is changing HR approach," *The Daily Record*, March 21, 2018
- Quoted in "Major changes for OT - New federal rules to affect most employers," *Rochester Business Journal*, May 20, 2016
- "How Protected is Your Business From Social Media Litigation," *Rochester Business Journal*, June 16, 2014
- "Crime and Punishment: Avoiding Punishment for Inquiries into Criminal Convictions and Arrests," *Rochester Business Alliance*, May/June 2014
- "HR Connection: Court Rules On Time Spent Donning, Doffing Gear," *NY Daily Record*, February 4, 2014

## Representative Presentations

- Employee Handbooks: Updates, Best Practices and Tips, Greater Rochester Chamber, March 15, 2023
- Navigating the Myriad of Leave Laws, NHRA-SHRM Annual Legal Update, February 15, 2023
- Panelist, "Independent Contractor vs. Employee Tests," Law Firm Alliance Labor & Employment Conference, February 3, 2023
- Leadership Series: Labor and Employment Law Webinar, *Rochester Business Journal*, February 10, 2022
- Navigating Vaccines & Exemptions, NHRA-SHRM Legal Update, February 8, 2022
- Employee Handbooks: Avoiding Common DEI Mistakes, Greater Rochester Chamber of Commerce, June 11, 2021

## Community Involvement

- ABVI Development Advisory, Former Committee Member
- American Heart Association, Volunteer
- American Red Cross, Greater Rochester Chapter, Former Board Member
- Former Member and Former Chair of Response & Resiliency Committee
- Crisis Communication, Erie Shore Landing, Committee Member
- Crisis Communication, The Wayne ARC, Committee Member
- National Human Resources Association, Rochester Affiliate, Advisor
- Young Women's College Prep Charter School of Rochester, Former Audit Committee Member

- Odyssey of the Mind, Coach