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Employment Group Of The Year: Gibson Dunn

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Gibson Dunn & Crutcher LLP scored significant employer-side wins this year, including a Texas federal court's decision to nationally invalidate a federal rule banning noncompetes and defeating misclassification claims against Uber in Massachusetts, once again earning the firm a spot among the 2024 *Law360* Employment Groups of the Year.

Jason Schwartz, co-chair of the firm's employment group and partner in the firm's Washington, D.C., office, said employment "has been a great growth engine" for the firm and is proportionally a large practice group.

Schwartz counted approximately 100 attorneys who describe employment as their primary practice area, along with another 300 "who do employment, among other things." He added that employment attorneys are located throughout the firm's domestic offices — including in New York, Washington, California, and in mid-country locations such as Denver and Dallas — along with a handful of attorneys in Europe and Asia, as well.

Among the firm's top accomplishments in the last year was securing an August 2024 Texas court ruling that permanently blocked the Federal Trade Commission's rule banning noncompete agreements, based on a finding that the rule exceeded the FTC's statutory authority.

Gibson Dunn represented the lead plaintiff in the case, tax firm Ryan LLC. After first winning a preliminary injunction against the rule for the named parties in the suit, Gibson Dunn convinced a Texas federal judge to grant national relief and vacate the rule using the Administrative Procedure Act.

Schwartz said the firm's victory on noncompetes was "a great example of our cross-practice group collaboration," noting that the employment team worked with appellate and administrative law experts. He also took note that former U.S. Department of Labor Secretary Eugene Scalia led the work on the case.

"Terrific matter for us, hugely impactful for the employer community, and fit nicely within our collaborative approach with those two areas of expertise," Schwartz said.

Another major victory for Gibson Dunn came in July 2024, when a federal judge handed Uber Technologies Inc. its first ever post-trial win on Fair Labor Standards Act claims of misclassification from a driver for Uber Black, which were launched against Uber and its Pennsylvania affiliate Gegen LLC.

The firm won judgment as a matter of law after two jury trials resulted in deadlocks, with polled majorities favoring Uber in each proceeding, after a Massachusetts federal judge determined the 8-year-old suit should be thrown out. The case is on appeal at the Third Circuit.

Related People

Jason C. Schwartz

Katherine V.A. Smith

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Schwartz said the case was a "great example" of how employment cases handled by Gibson Dunn often go to trial, saying the firm had to "make creative arguments about novel issues" in a case that challenged the gig economy business model more broadly.

Katherine Smith, a partner in the firm's Los Angeles office who also co-chairs the employment practice group, said as employment-related work "has been growing significantly," the practice group has grown at the same time.

"It has been a very busy few years. Basically since COVID hit, we have not taken a breath, and it's been growing ever since," she said.

Smith worked alongside Schwartz in another high-profile victory for Gibson Dunn in an executive compensation dispute against the former head of sports gambling company DraftKings' VIP business, in a case where the former executive attempted to invalidate his Massachusetts-based employment agreements including a noncompete by claiming California residency. The firm won a preliminary injunction against the former executive in April after he went to work for a competitor called Fanatics, with the court rejecting his California residency argument. That injunction was affirmed by the First Circuit in September.

"It was a fascinating case, and one that I think a lot of employers were watching very carefully," Smith said, because the dispute involved interactions between California and Massachusetts laws on noncompetes.

"It was really rewarding to see that this Massachusetts court was still going to enforce a noncompete, despite the invocation of California law," she said.

Smith added that with the area still legally developing, "I think DraftKings really set the table for what we're going to see a lot of executive disputes to be when executives leave, pick up and purport to move to California, [and] maybe not actually moving to California."

Looking ahead, Smith said another "huge focus" for the group has had to do with diversity, equity and inclusion, or DEI, initiatives, though she added that "a lot of that work is happening behind the scenes."

She said that 2025 could be the year that "all those charges and demand letters are going to convert to litigation" from parties claiming reverse discrimination or bringing other challenges to DEI programs.

In the meantime, Smith said Gibson Dunn continues to work with clients to perform audits of their DEI programs and mitigate potential liability, likening the process to "finding a way to adhere to their values without taking on too much risk."

But as for this year, she said that the firm was thrilled to again be named an employment group of the year by *Law360*, which she called a "huge honor."

"We treat every win as if it's the first, we're just as excited every time," Smith said.

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