

Employment Group Of The Year: Gibson Dunn

By **Emmy Freedman**

Law360 (January 19, 2023, 2:02 PM EST) -- An interdisciplinary employment law practice with a motto of handling the most sensitive matters for the largest employers, Gibson Dunn & Crutcher LLP shut down a former Amazon manager's misclassification lawsuit and successfully booted Lowe's workers' wage claims to arbitration, earning the team a place among Law360's 2022 Employment Groups of the Year.

Gibson Dunn continued to notch wins for major employers, building on its success from last year navigating disputes related to the pandemic and the expanding gig economy. The Los Angeles-based firm defeated the New York attorney general's COVID-19 safety suit against Amazon and convinced a top Massachusetts appellate judge to enforce Grubhub's arbitration agreement, reversing a Superior Court opinion.

The firm's lead employment attorneys said the practice's "secret sauce" — its tactic of bringing in experts from its appeals and class action teams to assist with employment disputes — has helped them secure wins at the appellate level.

"We're very team-oriented, we're always looking for really creative ways to address cases and look at them through a new lens and not just look at cases as though we're pulling out old playbooks," partner Megan Cooney said. "We're always ready for new ones."

Cooney said her proudest moment was pulling off a complete trial victory for Amazon in a five-year-long litigation brought against it by former warehouse manager Michael Ortiz, who claimed he and other managers were eligible for overtime and meal break pay.

"We took a different and creative approach to resolving that case, which I think helps generally in terms of showing that these claims can be litigated all the way through successfully," Cooney said. "And particularly [California's Private Attorneys General Act claims], which really scare a lot of employers because they're not subject to the same protections that class actions are. We showed that there's creative ways to address those cases and get them resolved without needing for them to devolve into quasi-class action litigation."

Gibson Dunn was also behind Amazon's defeat of New York Attorney General Letitia James' lawsuit claiming the e-commerce giant illegally retaliated against employees who raised health and safety



concerns related to COVID-19 precautions.

In a May opinion, a New York appellate court found James' claims were better suited to be heard by the National Labor Relations Board, and not the state. In making this decision, the four-judge panel also rejected James' request for a permanent injunction requiring Amazon to implement policies consistent with the state's COVID-19 workplace guidelines.

Katherine Smith, a co-chair of the firm's labor and employment group, said employment issues related to COVID-19 will continue to work their way through the court system. To avoid potential litigation stemming from the pandemic, she said it's important for employers to be candid with their workforce, such as explaining the reasons behind remote work policies.

"I think it's really important that employers are transparent with the employees about why they're making the decisions they are," Smith said. "If they're requiring people to come in every two or three days a week, then explain why. And where you see the most pushback from employees is where they're not getting those explanations, where the rules seem arbitrary and punitive."

Jason Schwartz, the firm's general counsel and co-chair of its labor and employment practice group, said the firm was also behind several major gig economy employers' successful bids to have workers' proposed class action claims sent to arbitration. In September, a California federal judge **tossed** a Lowe's employee's representative wage claims, ruling in the home improvement company's favor that its arbitration agreement stopped the worker from litigating claims under PAGA.

"All sorts of round peg, square hole, you know, trying to take gig economy engagements and place them into laws that they weren't designed for," Schwartz said. "The gig economy, I mean, all of these things present challenges for employers that they need the right lawyers to solve. And so our group has been focusing on that for a long time."

The team is now looking ahead to what might become the employment law trends in 2023, such as wage transparency laws and the use of artificial intelligence in hiring decisions and employee monitoring.

"Every year brings new questions related to technology, how it's used, and how it affects what people do in the workplace," Smith said. "And it's always interesting to see what the next frontier will be. So hopefully, we'll continue to monitor and be able to shape that law as it develops."

--Editing by Dave Trumbore.