



## Scott A. Hagen

Shareholder

801-323-3328

## Practice Areas

- Employment and Labor Law and Litigation
- Litigation

Scott A. Hagen is the Chair of the Firm's Employment and Labor Section. His practice includes labor relations, employment litigation, employee benefits (ERISA) litigation, and representation of clients before administrative agencies. Mr. Hagen has represented management in collective bargaining, labor arbitrations, unfair labor practice charges, representation elections, collective bargaining, state court injunctions regarding improper picketing, and hybrid lawsuits alleging breach of a collective bargaining agreement and breach of the fair duty of representation.

Mr. Hagen also has experience in employment discrimination, wrongful termination, wage disputes, employment-related tort actions (such as defamation claims and claims of intentional infliction of emotional distress), sexual harassment, class actions, and OSHA citations. In addition, Mr. Hagen has significant experience in enforcing employment-related covenants-not-to-compete through securing injunctive relief, as well as the defense of such actions.

Mr. Hagen has defended numerous claims brought under the Employee Retirement Income Security Act of 1974 (ERISA). His cases have involved claims for benefits, wrongful discharge in retaliation for exercising rights under the Act, breach of fiduciary duty, and violation of ERISA disclosure duties. Mr. Hagen has also represented clients in audits conducted by the Pension and Welfare Benefits Administration of the U.S. Department of Labor. Mr. Hagen has significant experience defending clients cited by the Utah Division of Occupational Safety and Health, Utah's OSHA counterpart.

Mr. Hagen has been recognized by *Chambers USA* in Labor & Employment (Band 2) and was included in the Spotlight Table in Labor & Employment: ERISA, a top recognition for attorneys in this area of practice. He has been named for the past several years as one of *The Best Lawyers in America* in Labor Law -Management and Employment Law-Management, and was recognized by Best Lawyers as Lawyer of the Year in Employment-Law-Management (2018). He maintains an AV Preeminent (5.0) rating with Martindale-Hubbell, which is the highest rating awarded to attorneys for professional competence and



ethics. Mr. Hagen has also been selected for inclusion in *Mountain States Super Lawyers* (2007-2017) in the category of Employment & Labor and has been voted by his peers throughout the state as one of Utah's "Legal Elite," as published in *Utah Business Magazine* (2005-2017).

## RECENT REPRESENTATIVE MATTERS

- Successfully defended employer in arbitration against claims of wrongful termination seeking more than \$4 million in damages. After 6-day arbitration hearing in January and February 2015, arbitrator ruled in favor of employer, determining that no damages should be awarded against client and ordering that the plaintiff pay employer's full attorney's fees and costs.
- Successfully defended national transportation company against claims of age discrimination, FMLA violations, and retaliation. After seven-day trial in the U.S. District Court for the District of Utah in October 2015, jury returned verdict in favor of employer on all claims.
- Successfully defended large multistate medical clinic against wrongful termination and related claims asserted by physician. After lengthy arbitration, all claims were resolved in favor of the medical clinic in March 2016.
- Negotiated several collective bargaining agreements for multiple employers and successfully defended employers in multiple unfair labor practice charges and labor arbitrations.
- Obtained summary judgment for employer in HIV discrimination case, that was subsequently affirmed by the Tenth Circuit Court of Appeals.
- Successfully defeated motion for temporary restraining order and injunction filed by United Mine Workers in an attempt to prevent implementation of tobacco-free policy.
- Led successful campaign effort of employer in defeating representation election involving over 1000 employees.
- Won appeal for employer that affirmed in sex discrimination case where plaintiff claimed discrimination based on his status as a transsexual. *Etsitty v. Utah Transit Authority*, 502 F.3d 1215 (10th Cir. Sep. 20, 2007).



- Obtained appellate reversal in favor of plaintiffs in ERISA class action. *Flinders v. Workforce Stabilization Plan of the Phillips Petroleum Company*, 491 F.3d 1180 (10th Cir. 2007).
- Won appeal affirming summary judgment for employer in class action lawsuit alleging violations of state and federal law in refusing to recognize and bargain with a separate union. *Burke v. Utah Transit Authority*, 462 F.3d 1253 (10th Cir. 2006).

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## Education

### University of Utah, J.D., 1986

- Order of the Coif
- Symposium Editor, UTAH LAW REVIEW

### University of Utah, B.A., Economics, 1983

- *magna cum laude*
- Phi Beta Kappa

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## Prior Professional Experience

- Navy Judge Advocate General's Corps., October 1986 – January 1991
- Special Ass't U.S. Attorney, 1990

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## Admitted to Practice

- United States Supreme Court
- United States Tenth Circuit Court of Appeals
- United States District Court, District of Utah
- United States Court of Military Appeals
- Utah Supreme Court
- Utah State Bar Association



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## Affiliations / Memberships

- Salt Lake County Bar Association, Executive Committee, 1996-2003 (President, 2001-2002)
- Federal Bar Association Executive Committee (2003-2007)

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## Professional and Civic Activities

- Board Member, University of Utah Alumni Association
- Board Member, Juvenile Diabetes Research Foundation Utah Chapter, 2000 – 2006, Major Donor Committee, 2005-present
- Foothill Baseball Association (youth baseball), Executive Board (2002-2010), President (2008-2010), Coach (2004-2009).

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## Publications / Presentations

- Speaker, Dealing with Problem Physicians, RQ&N Healthcare Seminar, October 12, 2017
- Speaker, Application of the National Labor Relations Act in the Workplace, National Business Institute, June 13, 2017
- Speaker, Preparing for Voir Dire, National Business Institute, August 20, 2015
- Speaker, Recent Developments in Labor & Employment Law, Federal Law Symposium, May 8, 2015
- Speaker, Testimony Tactics, Representing Your Client in Federal Court, National Business Institute, April 29, 2014
- Article, Notes on the Enforcement of Restrictive Covenants in Employment Agreements, *The Salt Lake Enterprise*, March 17, 2014
- Article, Enforcement of Restrictive Covenants in Physician Employments/Partnership Agreements, *Utah Physician Magazine*, February/March 2014
- Presenter, “Enforceability and Use of Restrictive Covenants: Non-Compete, Non-Solicity, and Non-Disclosure Agreements,” 2013 Salt Lake SHRM Employment Law Seminar
- Presenter, “Employee Use of Social Media and At-Will Employment: Recent Key Issues Under the NLRA,” 2013 Salt Lake SHRM Employment Law Seminar



- Labor and Employment Law Update, Federal Bar Association, Utah Chapter, October 2009, St. George, Utah and March 2010, St. George, Utah
- Article, ERISA Standards of Review and the Administrator's Conflict of Interest, *Utah Bar Journal*, September/October 2005
- Article, Sarbanes-Oxley: Managers Can Be Held Criminally Liable for "Retaliating" Against "Whistleblowers," *Utah Business Magazine*, May 2005
- Stress and Mental Disorder: New Responsibilities for Employers Under the ADA
- Employee Wage Discussions: Let Them Talk
- Employee or Independent Contractor
- Violence In The Workplace: What Every Employer Should Know
- Sexual Harassment Update, Utah State Bar Mid-Year Meeting
- Sexual Harassment in the Workplace
- Moderator, Personnel Law Update 1998, Council on Education in Management, May 5, 1998
- Moderator, Personnel Law Update 1998, Council on Education in Management, November 2, 1998