

Michael W. Johnston

Partner

Trial and Global Disputes

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Michael Johnston focuses on employment litigation and employment-related internal investigations. Michael is the senior partner in our Labor and Employment practice, which was recognized by Law360 as one of its Employment Practices of the Year in 2017. With over 37 years of litigation experience, Michael has been lead counsel in over 130 trials and has represented clients in trial and appellate courts nationwide and in the United States Supreme Court.

Michael represents clients in all aspects of employment litigation, with special emphasis on Equal Employment Opportunity Commission systemic discrimination lawsuits and investigations. He has defended complex class action and multi-plaintiff employment cases throughout the U.S.

A former prosecutor, Michael coordinates and directs internal investigations for companies accused of violating whistleblower retaliation provisions of the False Claims Act, Sarbanes-Oxley and other federal and state employment-related statutes. He also investigates employment irregularities, such as sexual and racial harassment.

In addition, Michael has extensive experience in the litigation of non-competition and non-solicitation agreements, trade secret laws, employment agreements and state tort law.

Michael has been named a 2017 Litigation Star by *Benchmark Litigation*. Among other honors, he also was recognized by *Super Lawyers* in 2015 for Employment Litigation—Defense, and as a *Law360* National MVP for Employment Litigation in 2014.

Matters

Represented **the University of Texas Southwestern** before the Fifth Circuit and the U.S. Supreme Court in *UTSW v. Nassar*, in which the Supreme Court held that plaintiffs alleging retaliation under Title VII must prove “but for” rather than the more plaintiff-friendly “contributing factor” causation.

Lead counsel for a **major specialty retail chain** in a nationwide lawsuit filed by the EEOC alleging a pattern or practice of discriminating against over 50,000 Black and Hispanic applicants for employment in over 70 stores.

Lead counsel for a **major insurance company** in a nationwide class and collective action alleging discrimination on the basis of race and age in Ohio federal court. The District Court dismissed with prejudice all class and collective action allegations as well as all allegations of disparate impact by the individual plaintiff.

Lead counsel for **Bank of New York Mellon** in an action to enforce non-compete and non-solicitation of customers' covenants signed by three senior executives who defected to a competitor with no notice. When the district court refused to enforce the covenants, Mr. Johnston represented BNY Mellon in its emergency appeal to the Eleventh Circuit, which reversed the district court and ordered that it grant the injunctive relief requested by BNY Mellon.

Lead counsel for the plaintiff, a **large home healthcare provider**, alleging that a senior executive who had defected to a competitor had stolen trade secrets and confidential information belonging to the client. The U.S. District Court issued a preliminary injunction prohibiting the senior executive from retaining or using any such information belonging to the client and from having any contact, other than purely social (which had to be logged), with former customers of the client.

Lead counsel for **GlaxoSmithKline** in a four-week jury trial involving allegation of FMLA retaliation and interference and retaliation in violation of Title VII of the Civil Rights Act of 1964. All of plaintiff's claims were dismissed by the trial court at the end of the evidence. This dismissal was affirmed by the Eleventh Circuit on appeal, at which Mr. Johnston argued for GSK. The plaintiff was ordered to pay GSK over \$120,000 in litigation expenses.

Lead counsel for **The Coca-Cola Company** in a nationwide class action alleging discrimination on the basis of race with respect to compensation, promotion and placement. In the midst of this case, the Company announced its first-ever Company-wide reduction in force, during which the Company reduced its workforce, including many class members, by over 6,000 positions. Mr. Johnston coordinated the legal advice to managers executing the reduction in force, with the defense of the class action resulting in successful resolution of the class action and no challenges to the legality of the reduction in force process or its results.

Lead counsel for **The Coca-Cola Company** in a series of 17 lawsuits filed by class members who opted out of the class action settlement and filed separate lawsuits. The plaintiffs were represented by famed plaintiffs' trial lawyer Willie Gary. Five of these cases resulted in summary judgment, dismissing all claims against the Company and requiring the plaintiffs to pay the Company's cost of litigation. The remaining cases were all resolved for the same amount or less than the plaintiffs would have received had the plaintiffs remained members of the class. In several cases, plaintiffs received as little as 60% of what they would have received had they remained members of the class.

Represented a **major pharmaceutical company** to enforce restrictive covenants in the employment agreement of a senior executive officer who defected to the company's major competitor. This matter involved lawsuits in three different U.S. District Courts, the Eleventh Circuit Court of Appeals and the state courts of two states.

Lead counsel for **the nation's largest retail jeweler** in the successful defense of a nationwide class action filed in the Northern District of Texas alleging discrimination on the basis of race in compensation, promotion and store placement.

Lead counsel for **the nation's largest retail jeweler**, in a successful effort to enforce the restrictive covenants contained in an agreement between Zales and one of its former senior executives who went to work for a competitor.

Lead counsel in the successful defense of **a nationwide brokerage firm** in a sexual harassment case brought by multiple female employees involving allegations of attempted rape, sodomy and sexual assault by a company executive.

Credentials

EDUCATION

LL.M., Georgetown University

J.D., University of Florida, high honors

B.S., United States Air Force Academy, with academic distinction

ADMISSIONS

Florida

Georgia

ASSOCIATIONS

The Florida Bar, Labor and Employment Law Sections

State Bar of Georgia, Labor and Employment Law Sections

Insights

CLIENT ALERT

June 28, 2017

Department of Justice Reverses Course on Class Action Waivers

May 23, 2017

New Georgia Law Expands Use of Paid Sick Leave

December 6, 2016

New Obama Administration Employment-based Visa Rule and Trump's Plan to Target Visa Abuse Create Uncertainty For Employers

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Events

CONFERENCE

November 13, 2018

11th Annual King & Spalding Pharmaceutical University

News

IN THE NEWS

July 1, 2019 • Source: Law360 and Bloomberg Law

Michael Johnston and Rebecca Cole Moore represent Volkswagen AG and two U.S. subsidiaries in employment class action U.S. District Court for the Eastern District of Tennessee

RECOGNITION

August 16, 2019

The Best Lawyers in America Recognizes 115 King & Spalding Lawyers in its 2020 Guide

King & Spalding Earns Top Rankings in Chambers USA 2019 Guide

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