



Barry M. Willoughby

PARTNER

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Working in the ever-changing field of labor and employment law, Barry Willoughby spends roughly half of his time counseling employers on how to avoid litigation, and the other half defending them when litigation is unavoidable. In his three decades on the front lines, he has encountered virtually every form of wrongful discharge claim, which he handles with both the skill and delicacy required in such “human issues” disputes.

Barry has broad and deep experience in enforcement of non-competition, non-solicitation, and confidentiality agreements in the Delaware Court of Chancery. Such litigation is typically expedited and requires the employer to seek temporary or preliminary injunctive relief to protect its rights. Barry and the Young Conaway team are known for their skillful and rapid action to protect employers from unfair competition from departing employees.

As a result of this experience, Barry and the Young Conaway team have developed sophisticated non-competition, non-solicitation, and confidentiality agreements to protect employers’ business, trade secrets, and intellectual property from use or disclosure by employees or former employees. These contracts usually contain state-of-the-art provisions that address — among other issues — jurisdiction and venue in the Delaware Court of Chancery.

Known for his sound judgment in sensitive employment issues, Barry does not hesitate to take a cost-benefit approach to disputes. His advice is invariably pragmatic, tailored to the business exigencies and risk tolerance of his clients, and he will recommend settling weak claims — or fighting strong ones — accordingly.

As discrimination law continues to narrow at the federal level, Barry notes that the states are now broadening “protections” for employees. Especially in the northeastern states — Delaware included — discrimination claims based on marital status, pregnancy, sexual orientation, gender identity, and genetic information now have the force of law. Barry believes that the rise of such claims at the state level gives new importance to his clients’ employment policies, which must be tailored to the states and jurisdictions where the employer operates to effectively minimize the risk of litigation.

Barry’s employment law experience has exposed him to numerous federal and state law constitutional claims on behalf of public sector clients. As a result, he has litigated several high profile claims involving state and federal constitutional law claims, many of which involve education law issues.

FOCUS:

- Representing employers in enforcing and drafting non-competition, non-solicitation and confidentiality agreements.
- Defending employers in claims of employment discrimination, retaliation, "whistleblower," and other "wrongful discharge" cases under federal and state law, including defense of charges of racial and sexual harassment.
- Defending public employers in First Amendment, due process, equal protection, and other constitutional law allegations.
- Representing employers in union related conflicts, including opposition to union organizing campaigns and defense of NLRB unfair labor practice proceedings and contractual grievance/arbitration hearings.

Practices

- Labor and Employment
- Education Law

Education

- Penn State The Dickinson School of Law (J.D., *cum laude*)
- University of Delaware (B.S.)
 - High Honors and Distinctions

Bar Admissions

- Delaware

Court Admissions

- U.S. District Court for the District of Delaware
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Supreme Court

Distinctions

- Martindale-Hubbell, AV Preeminent®, 2016
- *Chambers USA - America's Leading Lawyers for Business*, Labor and Employment, 2006-Present
- *The Best Lawyers in America*®, 2016 Delaware Labor and Employment Litigation Lawyer of the Year, 2014 Delaware Labor Law Management Lawyer of the Year and 2013 Delaware Management Employment Lawyer of the Year
- 2013 Lawyer of the Year, *Management Labor Law*
- Delaware *Super Lawyers*®, Employment & Labor, 2007 - Present

- *Who's Who Legal USA*, Management Labour & Employment, 2006

Memberships and Affiliations

- Delaware State Bar Association, Employment Law Section, Former Chair; Labor Law Committee, Former Chair; Member
- American Bar Association, Member
- College of Labor & Employment Lawyers, Fellow
- Society for Human Resources Managers (SHRM), Associated Member
- Delaware Council of School Board Attorneys
- Colonial Education Foundation, Board Member
- Defense Research Institute, an organization representing the interests of defendants in litigation matters
- United Way of Delaware, Inc., Pro Bono General Counsel; Chair - Statewide fundraising for the Attorneys Division; Ex-Officio Board Member
- Junior Achievement of Delaware, Inc., Pro Bono General Counsel and Corporate Secretary
- Wilmington Manor Volunteer Fire Company, Honorary Member

Experience

Biliski v. Red Clay Consolidated School District Board of Education, et.al

W. Denver Garrison, Jr. v. Red Clay Consolidated School District

Mongelli v. Red Clay Consolidated School District

In *Mongelli v. Red Clay Consol. Sch. Dist.*, the Plaintiff, a former high school special education teacher, claimed that she had been the victim of "sexual harassment" by a student and that she there after suffered retaliation for her alleged "complaints." Mongelli claimed that she suffered sexual harassment by a special education student during a twelve-day period and that the student's behavior created a hostile work environment. In addition to acting and making sexually suggestive remarks, Mongelli alleged that on one occasion he physically touched her in a sexually oriented manner.

In an opinion dated, June 4, 2007, the U.S. District Court for Delaware granted the school's Motion for Summary Judgment. Relying on EEOC guidelines suggesting that an employer may be liable for harassment by non-employees if reasonably subject to the employer's control, the Court recognized the legal theory that the school district could be liable for student harassment of a teacher. The Court ruled, however, that the student's behaviors were not sufficiently severe or pervasive to create a hostile work environment. Importantly, in reaching this conclusion, the Court relied on United States Supreme Court precedent focusing on the need for "careful consideration of the social context in which particular behavior occurs and is experienced by its target." Here, the identity of the harasser—a special education student, and the classroom setting, established that a reasonable person would not have been detrimentally affected.

The Court also rejected Mongelli's retaliation claim because the standard student disciplinary referral forms that she submitted did not constitute protected activity under Title VII of the Civil Rights Act. Instead, as a teacher, she was supposed to submit such forms "as a matter of course when students misbehaved." Notably, Mongelli did not file a complaint under her employer's anti-harassment policy or the Student Code of Conduct.

Curay-Cramer v. The Ursuline Academy of Wilmington, Delaware, Inc., et al.

On November 16, 2004, the Employment Law Department received word that a federal court dismissed all of the Plaintiffs claims in *Curay-Cramer v. The Ursuline Academy and the Catholic Diocese of Wilmington, et al.*

Chair of the Employment Department, Barry M. Willoughby, Partner, Tim Houseal, and Associate, Mike Stafford successfully defended Ursuline against claims that the school discriminated against a teacher in violation of Title VII of the Civil Rights Act when it terminated her for signing a "Pro-Choice" advertisement.

The case raised fundamental issues concerning the constitutional rights of religious institutions to be free from government interference in the teaching of religious principles. Willoughby said that, "The opinion is an important victory for religious freedom because it preserves the rights of religious schools and religious institutions to instill students with their religious values."

Among other things, the opinion states: "The Plaintiff's proposed construction of Title VII as preventing a Catholic school from disciplining a religion teacher who publicly repudiates a central tenet of the Catholic faith raises constitutional concerns in the starkest terms. With only slight disguise, it calls for court-imposed value judgments about religious doctrine and court supervision of church discipline. Short of a declaration that the Pope should pass draft encyclicals through the courts for approval, it is hard to conceive of a more obvious violation of the free exercise rights of the Catholic Church or a clearer case of inappropriate entanglement of church and state."

Bell v. Waste Management

The Employment Law section won a summary judgment in a Title VII and ADA discrimination case, avoiding a need for jury trial in January, 2005.

In *Bell v. Waste Management*, the Plaintiff contended that he had been the victim of discrimination based on his race and/or disability. He also argued that he had been subjected to a hostile work environment. Plaintiff's allegations were based on alleged disparate treatment in connection with disciplinary actions and his allegation that his supervisor directed the "n-word" towards him on one occasion.

In an opinion dated, October 29, 2004, the U.S. District Court granted the employer summary judgment finding that the Plaintiff had not adduced sufficient evidence of discrimination based on race or disability. The Court also found that a single incident of the alleged use of the "n-word" did not establish a hostile environment.

Cuffee v. Procter & Gamble and The Dover Wipes Company

On October 15, 2004, a federal court jury returned a fully favorable decision to the Defendant employer in *Cuffee v. Procter & Gamble and The Dover Wipes Company*, Civil Action No. 03-276-SLR.

Employment Law Section Chair **Barry Willoughby** and Partner **Teresa Cheek** teamed up to successfully defend the company in a week-long jury trial in which Plaintiff's claims included alleged race and gender discrimination in violation of the Equal Pay Act, Title VII of the Civil Rights Act, and Section 1981. The jury found in favor of Defendants on Plaintiff's claims of differential pay based on gender and race. The jury also found for the Defendants on Plaintiff's discriminatory demotion claim.

Young Conaway had previously obtained a partial summary judgment ruling, knocking out the Plaintiff's "constructive discharge" and retaliation claims.

On January 9, 2006, the Third Circuit affirmed the ruling of the U.S. District Court for Delaware, turning back challenges to the October 15, 2004, jury verdict in Defendants' favor.

After rejecting Plaintiff's million dollar demand, the Employment group, led by Chair **Barry Willoughby** and Partner **Teresa Cheek**, successfully obtained a defense verdict on Plaintiff's Equal Pay Act, Title VII, and Section 1981 claims.

The Court of Appeals found that the U.S. District Court properly rejected the Plaintiff's *Boston* challenges to jury selection and argument that Defendants' job classification system was not relevant to his equal pay claims.

NLRB v. DuPont Dow Elastomers

Kia Thoms and Jerome Pitts, Sr., as Guardian ad Litem for Jerome Pitts, Jr., a minor v. The Board of Education of the Brandywine School District, et al.

Marisol O. Quando and Tracey Floyd, as Guardians ad Litem for DF, a minor v. Board of Education of the Brandywine School District, et al.

NLRB v. Townsend

Publications

June 27, 2018

U.S. Supreme Court Rules Employees Cannot Be Forced To Pay Fair Share Fees

April 1, 2017

Violence in the Workplace: Balancing OSHA guidelines with ADA Duties

Delaware Employment Law Letter Vol. 22, No. 4

October 1, 2016

Weapons in the Workplace: Policy Considerations for Delaware Employers

Delaware Employment Law Letter, Vol. 21, No. 10

July 1, 2015

Key Takeaways from Abercrombie Decision

Delaware Employment Law Letter, Vol. 20, No. 7, July 2015

January 7, 2014

Noncompetition Agreements, Bloomberg BNA's Corporate Practice Series Portfolio No. 97

November 1, 2006

Employees Go Cyber: The Problem of Internet "Blogging"

Metropolitan Corporate Counsel, November 2006 at 30

Events

April 25, 2019

2019 Annual Employment Law Seminar

April 12, 2018

2018 Annual Labor and Employment Law Seminar

May 11, 2017

2017 Annual Labor and Employment Law Seminar

April 27, 2016

2016 Annual Employment Law Seminar

May 8, 2014

2014 Annual Employment Law Seminar

May 9, 2013

2013 Annual Employment Law Seminar

April 28, 2010

2010 Annual Employment Law Seminar

April 29, 2009

2009 Annual Employment Law Seminar

Chase Center on the Riverfront

February 17, 2009

"The Coming Union Revival Effort: The Employee Free choice Act and Other Likely Labor and Employment Law Changes," DelMarVa SHRM Monthly Meeting

The Georgia House

News

November 1, 2018

Delaware Today Magazine Recognizes 17 Young Conaway "Top Lawyers"

August 15, 2018

42 Young Conaway Lawyers Recognized by Best Lawyers in America, with 4 Attorneys Further Recognized as Lawyers of the Year (Wilmington, DE)

June 13, 2018

18 Young Conaway Attorneys Named 2018 Delaware Super Lawyers

May 4, 2018

23 Young Conaway Attorneys Ranked as "Leaders in their Field" in 2018 Chambers USA

August 15, 2017

41 Young Conaway Attorneys Named in The Best Lawyers In America and Three Attorneys Receive Additional Specialty Recognition as Lawyer of the Year (Wilmington, DE)

May 26, 2017

25 Young Conaway Attorneys Recognized As "Leaders In Their Field" by Chambers USA 2017 Edition

May 14, 2017

22 Young Conaway Attorneys Named 2017 Delaware Super Lawyers

May 27, 2016

28 Young Conaway Attorneys Ranked As "Leaders In Their Field" By Chambers USA 2016

May 13, 2016

23 Young Conaway Attorneys Named Delaware Super Lawyers, 4 Named Rising Stars

November 2, 2015

Delaware Today Announces 2015 Top Lawyers

August 17, 2015

36 Young Conaway Attorneys Named In 2016 Best Lawyers in America

May 28, 2015

21 Young Conaway Attorneys Featured as 2015 Delaware Super Lawyers, including 3 Rising Stars

May 19, 2015

24 Young Conaway Attorneys Ranked As Leaders In Their Field By Chambers USA 2015

May 27, 2014

19 Young Conaway Attorneys Featured as 2014 Delaware Super Lawyers, including 2 Rising Stars

May 23, 2014

25 Young Conaway Attorneys Listed As "Leaders in their Field" in Chambers USA for 2014

October 28, 2013

Nine Young Conaway Lawyers Chosen As "Top Lawyers" By Delaware Today Magazine

August 16, 2013

36 Young Conaway Attorneys Named Best Lawyers in America 2014

June 5, 2013

Twenty-Eight from Young Conaway are Delaware Super Lawyers 2013

May 24, 2013

Young Conaway -- Top Ranked in Chambers USA 2013

October 31, 2012

Delaware Today Names 14 YCST as "Top Lawyers" – The Most of Any Firm!

September 16, 2011

Young Conaway Attorneys Honored in The Best Lawyers in America® 2012

June 20, 2011

Barry Selected By M&A's Advisor As Finalist In 40 Under 40 List

June 10, 2011

Chambers USA 2011 – 21 YCST Lawyers And More Practice Areas Than Any Other DE Firm!