



Kimberly Klein

PARTNER



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Kimberly Klein is a partner and Leader of the firm's Employment Law practice and Employment Litigation practice. She has extensive experience representing companies and executives in employment litigation matters before state and federal courts, as well as federal and state agencies (including the Equal Employment Opportunity Commission, New York State Division of Human Rights, New York City Human Rights Commission) and arbitral forums. In this role, Kimberly has wide-ranging experience litigating discrimination and harassment cases (including sex, age, disability, national origin, equal pay, religion, race, sexual orientation), retaliation and whistleblower claims, restrictive covenants (non-compete, non-solicitation and non-disclosure), wrongful termination, leave laws, wage and hour claims, defamation and other torts, and complex contract claims, including breach of employment agreements. She also has argued appeals before state appellate courts.

Kimberly regularly advises and counsels employers of all sizes on a wide range of employment issues, including internal discrimination/harassment complaints and investigations, wage and hour compliance, employee discipline, disability and leave management (including FMLA, ADA, state sick leave laws, COVID-19 leave laws, NYS Paid Family Leave, pregnancy), reductions in force and related WARN Act compliance, accommodation obligations (including disability, pregnancy, religion, domestic violence), privacy in the workplace, classification of employees (exempt/non-exempt/independent contractors), hiring, terminations, restrictive covenants, performance management and many other issues employers face. She has also participated in collective bargaining negotiations and litigated unfair labor practice claims.

Kimberly routinely negotiates and drafts severance agreements and releases, employment agreements, offer letters, employee handbooks and workplace policies, compensation plans, and non-disclosure and restrictive covenant agreements. She conducts management training for employers on a wide variety of employment law topics, including, EEO/anti-harassment training.

Prior to joining Moses Singer, Kimberly was an associate at Proskauer Rose LLP. She earned her J.D. from New York Law School, where she graduated magna cum laude and

Practices / Industries

- Employment Law - Employment & Severance Agreements
- Employment Litigation
- Litigation
- Hospitality
- Family Offices
- Alternative Dispute Resolution
- Corporate
- Trade Secrets, Noncompete & Unfair Competition Litigation
- AI & Data Law

was a member of the Moot Court Association and the Journal of International and Comparative Law. With a Masters in Journalism and Public Affairs, Kimberly is a prolific writer and continues to publish alerts to keep her clients updated on the many important developments in the field.

Prior results do not guarantee a similar outcome.

Education

- New York Law School (J.D., *Magna Cum Laude*)
 - New York Law School Journal of International and Comparative Law, Staff Member, 1995; Notes and Comments Editor, 1996-1997
 - Semifinalist, Delaware Moot Court Competition; Octofinalist, Froessel Moot Court Competition
 - Recipient, Public Interest Fellowship
 - Author, "Open Video Systems: A Platform Worth Investing In?," 1996
- American University (M.A. in Journalism and Public Affairs)
- Washington University (B.A.)

Bar/Court Admissions

- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York
- New York

Presentations

- COVID-19 An Update Focused on PPP and ERC' Webinar, March 2021
- Employment Law Issues in the COVID-19 Era: Preparing for Reentry in the Workplace (Webinar), Greater New York Chamber of Commerce, August 2020.
- Employment Law Issues in the COVID-19 Era: Preparing for Reentry in the Workplace Webinar, June 2020.
- Ten Tips To Help Employers Prevent Discrimination Claims, May 2017.
- NLRB Expands Enforcement Efforts To Non-Unionized Employers Through Social Media Postings and Handbook Policies, September 2012.
- Best Practices For Preserving and Producing Electronically Stored Information, December 2011/January 2012.
- Employment Issues Employers Must Consider When Starting Their Own Business, January 2010.

Publications

May 22, 2025

Navigating Workforce Management Amid Tariff-Related Disruptions

Corporate Counsel

August 26, 2024

FTC Non-Compete Rule is Held Invalid - a Nationwide Stay Prevents the Rule From Taking Effect

Moses Singer Client Alert

May 16, 2024

FTC Rule on Non-Competes

Moses Singer Client Alert

June 29, 2023

**New York On Verge Of Adopting The Most Restrictive Law In The United States
Banning Non-Competition Agreements**

January 23, 2023

**Possible Transactional Implications of the FTC Proposal to Ban Non-Competition
Agreements in The United States**

January 9, 2023

**A Review of Key Recent Employment Laws New York Employers Should Be
Complying With**

November 9, 2021

OSHA Issues Rule on President Biden's Vaccine Mandate for Large Businesses

September 8, 2021

NY Employers Must Immediately Implement NY HERO Act

July 21, 2021

**NY Employers Are Required to Adopt Airborne Infectious Disease Prevention Plan
by August 5**

June 28, 2021

New York State Eliminates Mandatory Reopening Guidance for Offices

June 16, 2021

**New York Requires Employers to Adopt Safety Standards to Reduce Spread of
Diseases**

March 18, 2021

**New York Employers Must Provide Paid Leave to Employees for COVID-19
Vaccinations**

January 29, 2021

**Certain Borrowers Who Received a PPP Loan in 2020 May Be Eligible for a Second
Forgivable Loan**

January 19, 2021

**Eligible Employers Must Once Again Submit EEO-1 Data After Delay Due to
COVID-19**

January 4, 2021

Employers Can Require Vaccinations in the Workplace With Certain Exceptions

November 5, 2020

Changes to New York State's Travel Advisory

October 28, 2020

Ten Important Employment Law Updates for New York Employers

October 27, 2020

Important Recent Changes to NYS Voting Law

October 15, 2020

SBA and Treasury Release New Streamlined PPP Forgiveness Application for Loans of \$50,000 or Less

October 7, 2020

DOL Clarifies and Revises FFCRA Guidance After a NY Federal Court Invalidates Parts of the Final Rule

October 1, 2020

Navigating COVID-19 Leave Laws When Employees Return from High-Risk Travel Destinations

June 16, 2020

New PPP Guidance Provides for Partial Loan Forgiveness

June 8, 2020

Changes to Law Ease Restrictions on Use of PPP Funds

June 1, 2020

Employers Must Comply With Dozens of Mandatory Requirements as Offices Reopen

May 26, 2020

The SBA Issues PPP Loan Forgiveness Rules

May 11, 2020

Developing a Business Plan to Reenter the Workplace

April 27, 2020

Jogger Lawsuit Is a Lesson in Civility in New COVID-19 Normal

April 16, 2020

Most NY Employers Must Provide Paid Sick Leave in 2021

March 31, 2020

The Payroll Tax Credit – How Employers Get Reimbursed for Federally Mandated Paid Leave

March 30, 2020

DOL Provides Answers to Help Employers Manage Federally Mandated Paid Sick and Family Leave

March 26, 2020

The U.S. DOL Issues First Round of Regulations Interpreting the Federal Paid Sick and Medical Leave Law in Response to COVID-19

March 26, 2020

The Federal Government Mandates Paid Sick and Family Leave In Response to COVID-19

March 24, 2020

How to Manage Your Remote Workforce

July 31, 2019

More Changes to the Employment Landscape NY Employers Need to Know

July 1, 2019

NYS Makes it Easier for Employees to Bring Harassment Claims

May 16, 2019

More Employment Law Changes NY Employers Need to Know

March 22, 2019

New Proposed DOL Rule Would Make More Employees Eligible for Overtime

January 22, 2019

Employment Laws NY Employers Need to Know in 2019

August 31, 2018

Calendar of NYS and NYC Sexual Harassment Dates

May 30, 2018

Employers May Require Class Action Waivers in Arbitration Agreements

May 7, 2018

NYS and NYC have Passed New Anti-Sexual Harassment Laws Requiring Employers to Make Significant Changes to their Policies and to Implement Training

February 28, 2018

Does Your Company Have a Plan in Place if An Employee Complains of Sexual Harassment?

October 30, 2017

New York Employers Must Start Providing Paid Family Leave in 2018

Representative Matters

Employment Matters

Among the many employment-related litigations and proceedings handled by Ms. Klein, she has successfully:

- Successfully defended a pastry manufacturer in a federal wage-and-hour class action alleging violations of the Fair Labor Standards Act and New York Labor Law, including claims for unpaid spread-of-hours premiums and meal-and-rest-period compensation. After defeating a motion to disqualify the firm and leveraging a

strategic Rule 68 offer of judgment, Moses Singer resolved the matter for a fraction of the class-wide exposure—bringing the litigation to a swift and favorable close for our client.

- Secured the disposition of six different litigations alleging negligence and negligent hiring claims brought against a defendant, the leaseholder of the property where The Cosby Show was filmed from July 1987-1992. Two claims were dismissed outright, and plaintiff agreed not to oppose Moses Singer's motions to dismiss the remaining four claims.
- Obtained a dismissal of a Charge filed with the U.S. Equal Employment Opportunity Commission ("EEOC"), whereby the claimant alleged he was terminated based on his sexual orientation. After an investigation, the EEOC found that it could not establish that any employment action by the Company violated federal or state discrimination laws.
- Defeated a motion to dismiss our client's claims after defendants terminated our client (high-level C-suite employee) and refused to pay him in accordance with his employment agreement. Among the court's findings were that the incentive compensation was not discretionary, failure to pay a retention bonus may be a breach of good faith and fair dealing, the individual defendant (the CEO) was an employer under NY Labor Law, and the incentive compensation could be found to be earned wages warranting damages under New York Labor Law. (published decision) (Fischkoff v. Iovance Biotherapeutics, Inc. et al, No. 17 Civ. 5041 (AT) (GWG), 2018 BL 240813 (S.D.N.Y. July 05, 2018))
- Obtained partial dismissal of national origin and sex discrimination claims on a motion to dismiss brought against our client, as well as a ruling finding no individual liability on the part of the Chief Executive Officer and dismissing him from the action. Following the depositions of the individual employee plaintiffs, our client, which leases point-of-sale machines, obtained a favorable (but confidential) settlement. (2018)
- Obtained a Dismissal and Notice of Rights from the EEOC in favor of our client, an importer and exporter of costumes, dismissing complainant's Charge alleging wrongful termination based on age discrimination and retaliation. (2018)
- Successfully represented our client in obtaining dismissal of a complaint brought by a live-in nanny for wrongful eviction and breach of employment contract. (2017)
- Obtained spoliation sanctions, including adverse inferences, preclusion and attorneys' fee, for our client after plaintiff was found to have destroyed text messages, electronic data, her computer, handwritten notes, audio recordings and cell phones. The court further granted our motion to conduct a forensic examination of plaintiff's personal email account. (2017)
- Obtained a court ruling on behalf of our client, an art dealer, seeking discovery of plaintiff in a sexual harassment case concerning plaintiff's prior appearance on a reality television show. The court rejected plaintiff's claim that her appearance on the show was too prejudicial and instead found that her participation on the show was relevant to plaintiff's claim for damages. The court ruled defendants were entitled to depose plaintiff and seek discovery on the issue, including conducting an independent medical examination (IME). (2016)
- Successfully represented our client, a swimwear company, against claims made by a terminated employee for failure to pay a bonus and wrongful termination. The court granted our motion to dismiss the complaint in its entirety, together with costs and disbursements, finding that the bonus was at all times discretionary. (2015)
- Defeated a Temporary Restraining Order brought in Supreme Court, New York County by Red Door Salons, Inc. to prohibit our client from operating a competing salon in violation of a non-compete resulting in a quick settlement. (2013)
- Obtained a determination of No Probable Cause for our client, an equipment lease finance company, against claims of age discrimination before the New York State

Division of Human Rights. (2013)

- Defeated claims of race discrimination and retaliation in violation of N.Y. Executive Law brought against our client, an equipment lease finance company, before the New York State Division of Human Rights. (2013)
- Represented an outsourcing company before the New York State Division of Human Rights against federal and state harassment claims based on race and marital status. (2012)
- Defended a company that provides tutors to New York City schools before the City of New York, Commission on Human Rights against age discrimination claims by an applicant. (2012)
- Obtained a finding of No Probable Cause for our client, an outsourcing company, against a former employee alleging retaliation in violation of New York State Executive Law before the New York State Division of Human Rights Division. (2012)
- Represented a costume company before the New York State Division of Human Rights against claims of religious discrimination and retaliation by a former employee who was an observant Jew. Despite receiving a determination of No Probable Cause, plaintiff commenced an action before the U.S. District Court, Eastern District of New York, which was quickly dismissed after oral argument at a pre-motion conference without any motion filed. (2012)
- Defended a private equity investment fund against claims of discrimination based on national origin before the State of Connecticut, Commission on Human Rights and Opportunities ("CHRO"). (2011)
- Brought a motion to dismiss plaintiff's complaint in Supreme Court, New York County, for alleged improper payment under New York Labor Law and other wage-related claims against our client, a production company that creates content for film, television, the web and mobile devices. (2010-2011)
- Settled a breach of employment agreement brought by our client in U.S. District Court, Southern District of New York for roughly \$5 million. (2009)
- Defeated claims of wrongful termination and defamation brought by a former employee/broker against our broker-dealer client in an arbitration before the NASD Dispute Resolution, now FINRA. (2006)
- Defeated claims for race and sex discrimination brought before the CHRO for our client, a technology release management firm. (2006)
- Defeated age and race claims in the U.S. District Court, District of New Jersey against our client a broker-dealer. (2006)

General Litigation

Among the many general litigation matters handled by Ms. Klein, she has successfully:

- Dismissal of complaint alleging theft of trade secrets, breach of a term sheet and equitable relief against our client, a manufacturer and supplier of components to power companies and the U.S. military. The ruling was affirmed on plaintiff's motion for reconsideration and by the Appellate Division, First Department in a published decision. (2008-2009)
- Defended our client, an equipment lease finance company, in an arbitration before the American Arbitration Association, against claims by a competitor of breach of an Asset Purchase Agreement. (2008)
- Obtained a default judgment for our client, a provider of satellite services, for approximately \$536,000 after commencing an action in Supreme Court, New York County for breach of contract and account stated. (2007)
- Settled an action brought by our client, a large telecommunications company, in Supreme Court, New York County for roughly the full amount of the claim shortly after

commencing the action alleging breach of contract and unjust enrichment. (2009)

- Defeated a summary judgment motion for breach of a loan authorization and fee agreement against our client, a commercial mortgage broker, in the U.S. District Court, District of New Jersey. (2004)

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