



## Mark H. Dellinger

Member

### Charleston Office

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## Mark H. Dellinger is a Member and Co-Leader of the Firm's Labor & Employment practice group. He practices out of the Firm's office in Charleston, West Virginia.

With a career spanning nearly 25 years, Mark has built a solid practice focused on representing private and public sector employers in preventive counseling, employment litigation, and traditional labor relations matters. A significant part of Mark's litigation practice is devoted to representing employers in the defense of cases filed in federal and state courts. He is a seasoned trial attorney, having successfully tried many types of employment cases to verdict, including claims of wrongful discharge, discrimination, harassment, and retaliation. Mark also represents employers in administrative hearings and other proceedings before various federal and state agencies.

As part of his labor relations practice, Mark focuses on issues arising under the National Labor Relations Act and routinely handles collective bargaining negotiations, union elections and representation proceedings, unfair labor practice charges, individual and class action grievance arbitrations, and litigation under Section 301 of the Labor Management Relations Act. His representation of employers in labor relations matters encompasses multiple industries, including health care, utilities, transportation, manufacturing, energy, telecommunications, and gaming. Mark is one of the few attorneys in West Virginia who is also experienced in representing municipalities and public employers in labor matters.

In addition to his law practice, Mark routinely presents and writes articles on labor and employment law topics. He recently co-authored the following law review article: *The West Virginia Workers' Compensation Act: Providing "Sweeping Immunity" From Common Law Tort Claims in Employment Discrimination Cases*, 122 W. Va. L. Rev. Online 2 (2020).

Mark has served as a member of the State Personnel Board, which establishes policy for the state's classified employees, by appointment of the Governor of West Virginia.

Prior to joining the Firm, Mark served as the leader of a labor and employment practice group of a regional law firm for over a decade.

## Awards

- Named to *The Best Lawyers in America*® for Employment Law - Management; Litigation - Labor & Employment (2011-present)
- Ranked in *Chambers USA: America's Leading Lawyers for Business* among "Leaders in Their Field" for Labor and Employment Law (2009-present)
- Recognized by West Virginia *Super Lawyers*® - Employment & Labor (2007-present)
- Peer-Review Rated AV Preeminent by Martindale-Hubbell
- Selected as a 2022 Top Rated Litigator by Martindale-Hubbell and American Lawyer Media
- Selected as a 2019 Elite Lawyer of the South by Martindale-Hubbell and American Lawyer Media
- Selected as a 2018 Elite Lawyer of the South by Martindale-Hubbell and American Lawyer Media

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## Notable Legal Experience

- Obtained a complete defense verdict for a division of a publicly traded company in a disability discrimination/failure to accommodate and gender pay disparity case after a three-day jury trial
- Obtained a complete defense verdict on behalf of a publicly traded company in a wrongful discharge/gender discrimination case after an eight-day jury trial
- Obtained a complete defense verdict on behalf of a state official in a multi-party sexual harassment case after a five-day jury trial
- Obtained a verdict of no damages on behalf of a manufacturing company in a sexual harassment case after a five-day jury trial
- Obtained a complete dismissal of a disability discrimination case on behalf of an electrical contractor after a three-day administrative trial before the West Virginia Human Rights Commission
- Successfully represented oral surgeon in an injunction action where former employer sought to enforce multiple restrictive covenants
- Successfully defended an energy company in a "same sex" sexual harassment case filed by the U.S. Equal Employment Opportunity Commission
- Defeated a collective action brought under the Fair Labor Standards Act
- Obtained numerous dismissal and summary judgment orders in employment cases
- Successfully prosecuted motions to compel arbitration of employment claims
- Provided testimony before the West Virginia Legislature in support of labor legislation
- Served as chief negotiator for employers during collective bargaining negotiations
- Represented employers in over 20 individual and class action labor arbitrations involving "just cause" discharge and various contractual issues such as bidding and awarding of vacant positions, subcontracting, hours of operation, health benefit changes, and dues check-off clauses
- Substantial experience representing employers in unemployment compensation proceedings, including strike-related claims before the Labor Dispute Tribunal
- Authored approximately 50 published articles on labor and employment law topics

## Work History

- Jackson Kelly PLLC (2018-Present)
- Bowles Rice LLP (1999-2018)
- Seibert & Kasserman, L.C. (1998-1999)

## Practices

- Labor & Employment

## Industries

- Coal
- Energy
- Manufacturing

## Education

- West Virginia University College of Law (J.D., 1998)
- Lenoir-Rhyne University (B.A., 1991)

## Admissions

- West Virginia (1998)
- Supreme Court of Appeals of West Virginia (1998)
- U.S. Court of Appeals, Fourth Circuit (2007)
- U.S. District Court, Southern District of West Virginia (1998)
- U.S. District Court, Northern District of West Virginia (1998)

## Professional Organizations

- American Bar Association
  - Labor and Employment Law Section
- West Virginia State Bar
  - Employment Law Committee
- Defense Research Institute
  - Employment Law Committee
  - Former Member (2000-2019) and Regional Editor of *The Job Description*
- Defense Trial Counsel of West Virginia
  - Employment Law Committee

## Representative Published Decisions

- *Morrissey v. West Virginia AFL-CIO*, 243 W. Va. 86, 842 S.E.2d 455 (2020) (co-authored *amicus curiae* brief supporting the constitutionality of the Workplace Freedom Act a/k/a West Virginia's Right to Work Law)
- *Brevard v. Racing Corp. of W. Va.*, 2020 WL 1860713 (S.D.W. Va. Apr. 13, 2020) (dismissing six employment claims and portions of two others on multiple grounds, including failure to exhaust administrative remedies, statute of limitations, workers' compensation immunity/exclusivity, at-will disclaimers precluded implied contract claim, and failure to satisfy the plausibility standard for federal court pleading)
- *Laborers' International Union of North America Local 1353 v. West Virginia American Water Company*, 2019 WL 2166534 (S.D.W. Va. May 17, 2019) (granting motion to dismiss union's claims under Section 301 of the Labor Management Relations Act and Declaratory Judgment Act)
- *Fugate v. Frontier West Virginia Inc.*, 304 F.Supp.3d 503 (S.D.W. Va. 2018) (granting summary judgment on FMLA interference and retaliation claims)
- *Verizon Services Corp. v. Board of Review of WorkForce West Virginia*, 240 W. Va. 355, 811 S.E.2d 885 (2018) (interpreting "stoppage of work" provision of unemployment compensation statute and holding that striking employees were disqualified from receiving benefits as part of a nationwide labor strike)
- *Fugate v. Frontier West Virginia Inc.*, 2017 WL 3065216 (S.D.W. Va. July 19, 2017) (dismissing multiple claims on the grounds of workers' compensation immunity/exclusivity, res judicata, and failure to satisfy the at-will employment requirement necessary to sustain a retaliatory discharge claim)
- *Lindenmuth v. Laboratory Corporation of America*, 2016 WL 5109159 (S.D.W. Va. Sept. 19, 2016) (granting summary judgment on age and disability discrimination claims)
- *Randolph-Kennedy v. Verizon Services Corp.*, 2015 WL 20693822, No. 14-0682 (W. Va. Supreme Court, May 1, 2015) (memorandum decision) (claimant disqualified from receiving unemployment compensation benefits based on acceptance of employment separation package)
- *Hope v. Board of Directors of Kanawha Public Service Dist.*, 2013 WL 3340699 (S.D.W. Va. July 2, 2013) (dismissing claims alleging retaliatory discharge, intentional infliction of emotional distress and constitutional violations)
- *Verizon Services Corp. v. Epling*, 230 W. Va. 439, 739 S.E.2d 290 (2013) (claimant disqualified from receiving unemployment compensation benefits when she quit her job based on a change in work schedule)
- *Porter v. Petroleum Transport, Inc.*, 2012 WL 3918356 (S.D.W. Va. Sept. 7, 2012) (granting summary judgment on the issue of "willfulness" and determining that two year, rather than three year, statute of limitations applied to a

FLSA collective action)

- *Elswick v. Daniels Electric Inc.*, 787 F.Supp.2d 443 (S.D.W. Va. 2011) (dismissing claim under the Wage Payment and Collection Act as being preempted by the Labor Management Relations Act)
- *Thomas v. Wells Fargo Insurance Services of West Virginia, Inc.*, 2010 WL 370266 (S.D.W. Va. Sept. 14, 2010) (granting motion to dismiss breach of contract and wage payment claims on the grounds of release, waiver and ERISA preemption)
- *Deem v. BB&T Corp.*, 279 Fed.Appx. 283 (4th Cir. 2008) (affirming dismissal of claims for gender discrimination, retaliation and tortious interference on the grounds of ERISA preemption)
- *Casto v. American Union Boiler Company of West Virginia*, 2006 WL 660458 (S.D.W. Va. March 14, 2006) (dismissing age discrimination claim based on the doctrine of judicial estoppel)
- *State ex rel. Wells v. Matish*, 215 W. Va. 686, 600 S.E.2d 583 (2004) (granting motion to compel arbitration of employment claims)
- *State ex rel. Sale v. Goldman*, 208 W. Va. 186, 539 S.E.2d 446 (2000) (rejecting constitutional challenge to municipal curfew ordinance)
- *Vieweg v. Gatson*, 209 W. Va. 268, 546 S.E.2d 267 (2000) (analyzing voluntarily quit provision of unemployment compensation statute where claimants were discharged prior to the date of their prospective resignations)

## Speaking Engagements & Publications

### Speaking Engagements

- Presenter, "Drafting Effective Dispositive Motions," Jackson Kelly PLLC Litigation Training, Sept. 29, 2021
- Presenter, "Workplace Disputes: How to Win at Settlement, Mediation and Trial," National Business Institute (NBI), Charleston, West Virginia, March 11, 2020
- Presenter, "Preparing to Conduct an Effective Cross-Examination at Trial," Jackson Kelly PLLC Litigation Training, June 20, 2019
- Presenter, "How the Trump Administration NLRB's Recent Decisions Affect All Employers," Jackson Kelly PLLC Trends in Employment and Labor Law Seminar, Tropicana Evansville, Indiana, Jan. 25, 2019
- Co-presenter with Al F. Sebok, "How the NLRB's Recent Decisions Affect All Employers," Jackson Kelly PLLC Trends in WV Employment, Labor and Benefits Law Seminar, Charleston, West Virginia, Oct. 16, 2018
- Presenter, "Employment Law Update: Emerging Issues in Litigating Damages in Employment Cases," West Virginia University Continuing Legal Education (WVCLE), May 24, 2018
- Prior to 2018, Mark has conducted presentations on various labor and employment topics for the following industry groups, organizations and commercial entities: AlignHR; Lorman Education Services; National Business Institute (NBI); Society for Human Resource Management; West Virginia Chamber of Commerce; West Virginia Equal Employment Opportunity Office; West Virginia Rural Water Association; West Virginia Tax Institute; and West Virginia University Continuing Legal Education (WVCLE)

### Writings and Publications

- Co-author with [Grace E. Hurney](#), "The West Virginia Workers' Compensation Act: Providing 'Sweeping Immunity' From Common Law Tort Claims in Employment Discrimination Cases," 122 W. Va. L. Rev. Online 2, Jan. 2020
- "Ssh...Don't Let Workplace Gossip Lead to a Claim of Discrimination!," *The Community Banker*, Quarter 3, 2019
- "Constructing a Plan to Prepare for Medical Cannabis Issues in the Workplace," *West Virginia Construction News*, Nov./Dec. 2017
- "The West Virginia Safer Workplace Act Expands the Ability of Banks to Conduct Alcohol and Drug Testing," *West Virginia Banker*, Fall 2017
- "West Virginia Employers Need to Prepare for Medical Cannabis," *The State Journal*, May 30, 2017
- "The Defend Trade Secrets Act: A Bank's New Remedy for Misappropriation of Trade Secrets," *The Community Banker*, Summer 2016
- "Recent West Virginia Employment Legislation Affecting Banks," *The Community Banker*, Fall 2015

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- “Is It Possible for Employers to Prove There Was a ‘Stoppage of Work’ When Defending Unemployment Compensation Claims Arising Out of a Labor Dispute,” *Defense Trial Counsel of West Virginia Annual Meeting Notebook of Articles*, Thirty-Second Annual Meeting, May 2014
- “Avoiding Liability for Unemployment Compensation Benefits When an Employee Resigns Due to a Change in Work Hours,” *The Community Banker*, Winter 2014
- “Counselor’s Corner: Avoiding Unemployment Compensation Liability When Employees Resign Their Employment as a Result of a Change in Work Hours,” *Mountain State Manufacturing*, Spring 2013
- “EEOC Issues Updated Guidance on Employer Use of Criminal Background Information,” *West Virginia Banker*, Winter 2012
- “Counselor’s Corner: Managing Risks in the Electronic Workplace,” *Mountain State Manufacturing*, Summer 2011
- “U.S. Supreme Court Holds That Employers are Subject to Third-Party Retaliation Claims,” *West Virginia Human Resources Journal*, West Virginia Chamber of Commerce, Spring 2011
- “Time for a Legal Check-Up: How Healthy is Your Wellness Program?,” *West Virginia Human Resources Journal*, West Virginia Chamber of Commerce, Fall 2010
- “Pandemic Preparations for the Workplace: Considerations for West Virginia Employers,” *West Virginia Human Resources Journal*, West Virginia Chamber of Commerce, Summer 2009
- “The West Virginia Workers’ Compensation Act: Using Statutory Immunity to Defeat Common Law Claims in Employment Discrimination Cases,” *Defense Trial Counsel of West Virginia Annual Meeting Notebook of Articles*, Twenty-Sixth Annual Meeting, May 14-16, 2008
- Authored numerous other labor and employment articles prior to 2008

## Community

- West Virginia State Personnel Board by appointment of the Governor, Former Member
- West Virginia Chamber of Commerce, Human Resources Committee
- Mountaineer Athletic Club of West Virginia University, Member