

# Accommodating Employees Post-Pandemic

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# New Questions, New Problems

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## Americans With Disabilities Act ("ADA")

- Prohibits discrimination against a qualified individual with a disability.
- Covers all aspects of employment relationship.
- Employers also must provide "reasonable accommodation" for disabled persons who are otherwise qualified to work unless the accommodation would impose an "undue hardship."

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## What Is A "Disability?"

- Starting point for ADA Analysis.
- Initially a "Hot Topic" for ADA Litigation.
- Definition of "Disability":
  - a physical or mental impairment that substantially limits one or more of the major life activities of that individual;
  - a record of such an impairment; or
  - being regarded as having such an impairment.

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## "Substantially Limits" Definition

- *Toyota Motor Mfg., Kentucky, Inc. v. Williams*

- U.S. Supreme Court Case
- Key Issue:
  - What does an individual have to demonstrate to establish a substantial limitation in the specific major life activity of performing manual tasks?
- Holding:
  - "Major life activity" and "substantially limits" are to be **interpreted strictly**.
  - "Major life activities" are those activities that are of "central importance to daily life."

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## "Substantially Limits" Definition

- ADAAA's response

- ADAAA rejects:
  - *Toyota* strict interpretation standard.
  - *Toyota* holding that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives."
- **New Rule of Construction:**
  - The determination of whether an individual's impairment is a disability "should not demand extensive analysis."
  - An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

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## Record Of An Impairment That Substantially Limits A Major Life Activity

- A history of, or being misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- This includes persons who have had a disabling impairment, but who have recovered in whole or in part and are not now substantially limited.

## Regarded As Having An Impairment That Substantially Limits A Major Life Activity

The regulations provide that an individual is "regarded as" or is perceived as having an impairment that substantially limits a major life activity where the individual:

- Has a physical or mental impairment that does not substantially limit major life activities, but is treated by a covered entity as constituting such a limitation;
- Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or
- Has none of these impairments, but is treated by a covered entity as having a substantially limiting impairment.

## Understanding Who Is A Qualified Individual With A Disability

- Qualified individual with a disability:
  - "An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. . ."
- If a qualified individual rejects an accommodation and, as a result, cannot perform essential functions of the position, the individual is no longer deemed "qualified" and loses the protection of the ADA.

## Essential Functions

- Defined by regulations to mean "the fundamental job duties of the employment position the individual with a disability holds or desires. [The term] does not include the marginal functions of the position."
- Whether a particular function is essential is a factual determination that must be made on a case-by-case basis.

## Employer's Discretion

- The employer's judgment
- The job descriptions

## Reasonable Accommodations Under The ADA

- Employers must make "reasonable accommodations" for disabled individuals who are otherwise qualified to work.
- Exception: The Employer can demonstrate that the accommodation would impose an undue hardship on its business.
- Disability may include allergies or sensitivities to an ingredient in a COVID-19 vaccine, other medical conditions or mental health issues.

## Vaccines

- Do you have to accommodate someone who:
  - Cannot get a vaccine for medical reasons?
  - Cannot get a vaccine for religious reasons?
  - Cannot get a vaccine for reasons of conscience?
  - Cannot get a vaccine because they have a fear or phobia?
  - Sincerely believes in their personal right of self determination?

## Reasonable Accommodations Under The ADA

- Request is made by employee to be exempted from vaccine requirement.
- Both employee and employer must engage in an "interactive process."
- Considerations should be made based on individualized assessment.
- Accommodation requests and interactive process should be documented.
- Process must be appropriately managed (HR?).

## Reasonable Accommodations Under The ADA

- "Reasonable accommodation" does not require "best possible" or "preferred" accommodation.
- Importantly for COVID-19, "reasonable accommodation" may mean working from home for an extended period of time.
- May also include exempting employee from a mandatory vaccination requirement.
- May include job restructuring, barriers, relocation, enhanced PPE.

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## Medical Reasons

The best summary:

- *Exemptions Q: Are exemptions allowed? Exemptions could be appropriate in certain limited circumstances, **but no exemption should be provided to any staff for whom it is not legally required (under the ADA or Title VII of the Civil Rights Act of 1964) or who requests an exemption solely to evade vaccination.***
- . . . .
- *Q: What is the process for staff to seek a medical exemption? A: Employers should **ensure that all documentation confirming recognized clinical contraindications to COVID-19 vaccinations for staff seeking a medical exemption are signed and dated by a licensed practitioner, who is not the individual requesting the exemption and is acting within their respective scope of practice based on applicable state and local laws.** This documentation must contain all information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive and the recognized clinical reasons for the contraindications. Additionally, a statement by the authenticating practitioner recommending that the staff member be exempted from the facility's COVID-19 vaccination requirements is also expected.*

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## Medical Contraindications

- Persons who should not get vaccinated:
  - Severe or immediate allergic reaction to any ingredient in an mRNA COVID-19 vaccine.
  - Severe or immediate allergic reaction after getting the first dose of the vaccine.
- Individual medical or health conditions.

## Phobia Reasons

- A phobia regarding the vaccine or its application to an individual may—in certain limited circumstances—declare itself in a form (whether physical or psychologically) that would lead a medical professional to document a clinical contraindication to vaccination. Such a document would require an actual analysis of the contraindication to vaccination rather than dread or unspecified fear without any physical or psychological symptoms supporting the contraindication. This would also mean that employee's generalized concerns about the vaccine, without more, would likely be insufficient.

## Can You Exclude From Work An Employee Unable To Receive A Vaccination Because Of A Disability?

- Must show that an unvaccinated employee would pose a direct threat due to a "significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." 29 C.F.R. 1630.2(r)

## Is The Vaccine An ADA Medical Examination?

- Not a medical examination:
  - Medical examination is "a procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual's physical or mental impairments or health."
- Vaccination is not seeking information about an individual's impairments or current health status.

## Pre-Screening – Disability-Related Inquiry?

- Employer-provided vaccine (or through contracted third party).
- Medical screening questions are likely to elicit information about a disability
- Must be "job-related and consistent with business necessity":
  - Reasonable belief, based on objective evidence, that an employee who does not answer the questions and therefore, does not receive a vaccination, will pose a direct threat to the health and safety of her or himself or others.

## When Is It Not A Disability-Related Inquiry?

- Employer offers on a voluntary basis.
- Employee receives an employer-required vaccination from a third party that does not have a contract with the employer.

## What About Proof Of Vaccination?

- Not a disability-related inquiry.
- Not likely to elicit information about a disability.
- Caution:
  - Do not ask WHY an employee did not receive a vaccination.
  - Advise employee not to provide medical information as part of proof.

## Title VII Of The Civil Rights Act Of 1964

- Prohibits discrimination on the basis of religion.
- Requires employers to provide accommodations due to an employee's religion.

## Title VII: Religious Accommodation

- Sincerely held religious beliefs, observances, and practices when requested,
  - Unless:
- Accommodation would impose an undue hardship on business operations.

## Is The Belief Religious?

- EEOC Definition – Religion:
  - Moral or ethical beliefs as to right and wrong.
  - Sincerely held with the strength of traditional religious views.
- What about personal or ethical objections?
  - Not all beliefs are protected.
  - Religion concerns ultimate ideas about life, purpose, and death.
  - Social, political, or economic philosophies, personal preferences are not protected religious beliefs.

## Medical Objections – Religious?

- Personal anti-vaccination positions generally not religious in nature:
  - Fallon v. Mercy Catholic Med. Ctr., 877 F.3d 487 (3d Cir. 2017) (believed vaccine might do more harm than good).
  - Brown v. Children’s Hosp. of Phila., 794 F. App’x 226 (3d Cir. 2020) (believed she had already proved she would remain healthy due to her African Holistic Health lifestyle)
- Exercise Caution!!

## Is The Belief Sincerely Held?

### Considerations:

- Employee behavior inconsistent with the professed belief.
- Is the requested accommodation a desirable benefit?
- Is the timing of the request suspicious?
- Other information that suggests the accommodation is not sought for religious reasons.

## Beliefs Change Over Time?

- Prior inconsistent conduct is relevant to the question of sincerity.
- However, beliefs – or degree of adherence – may change over time.
- EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569 (7th Cir. 1997).
- Cooper v. Oak Rubber Co., 15 F.3d 1375 (6th Cir. 1994).

## Self-Determination Or Conscience

- As yet, there is no case law that supports any claim that one's individualized sense of either self determination or conscience would permit one to be excused from the requirement that employees be vaccinated.

## Would A Reasonable Accommodation Impose Undue Hardship?

- Factors:
  - Type of workplace.
  - Nature of the employee's duties.
  - Identifiable cost of the accommodation in relation to the size and operating costs of the employer.
  - Number of employees who will need a particular accommodation.

## What Is "Undue Hardship" Under The ADA And Title VII?

- Standard – Title VII:
  - "more than *de minimis* cost"
- Standard – ADA:
  - "significant difficulty or expense"
- Title VII standard presents lower burden.

## Undue Hardship Can Exist ...

- Where the accommodation ...
  - Diminishes efficiency in other jobs.
  - Infringes on other employees' job rights or benefits.
  - Impairs workplace safety.
  - Causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work.
  - Causes or increases safety risks or the risk of legal liability for the employer.

## Leave vs. Termination

- According to the EEOC, "if an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities."

## Other Accommodation Requests

- Telework
- Childcare
- Medical Condition of Spouse of Family Member

## Pennsylvania's Medical Marijuana Act

- The MMA prohibits employers from discharging, threatening, refusing to hire, discriminating or retaliating against employees "solely on the basis of such employee's status as an individual who is certified to use medical marijuana."
- In other words, taking adverse action against an employee based solely on the individual's status as a medical marijuana cardholder would likely be considered discrimination under the MMA.

## Four General Principles for Employers under the MMA

1. You can't take adverse action against an employee based solely on the fact that they are certified to use medical marijuana. 35 P.S. § 10231.2103(b)(1).
2. You are not required to make any accommodation for the use of medical marijuana in the workplace. § 10231.2103(b)(2)).
3. You may discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence when the employee's conduct falls below the standard of care normally accepted for the position. § 10231.2103(b)(2).
4. CDL drivers must abide by all FMCSA rules.

## Specific Employment Prohibitions

- An employee may be prohibited from performing any duty which could result in a **public health or safety risk while** under the influence of medical marijuana.
- An employee may be prohibited from performing any task which the employer deems **life-threatening**, to either the employee or any of the employees of the employer, while under the influence of medical marijuana.
- An employee may not perform any duties at heights or in confined spaces, while under the influence of medical marijuana.

## Specific Employment Prohibitions

- An employee may not operate/be in physical control of any of the following while under the influence with a blood content of more than 10 nanograms of active THC per millimeter of blood in serum:
  - Chemicals which require a permit issued by the federal or state government or federal or state government agency.
  - High-voltage electricity or any other public utility.

## Under what circumstances must medical marijuana use be accommodated?

*Swope v. Harrisburg Area Community College*  
(Pa. Cmwlth Ct. Oct. 2020).

- Court ruled that HACC need not accommodate medical marijuana use by a nursing student. (HACC need not waive its annual drug test for a student with a valid medical marijuana card).
- The application of this decision in the employment context is uncertain.

## Pennsylvania's Medical Marijuana Act

- The MMA does not, however, require employers to accommodate the use of marijuana on the job "when the employee's conduct falls below the standard of care normally accepted for that position," and allows employers to discipline employees who are "under the influence" of medical marijuana at work.

## Pennsylvania's Medical Marijuana Act

- The law is silent as to whether an employer can rely upon a positive drug test as a reason for an adverse employment action in itself, or as evidence of impairment.
- Additionally, Pennsylvania employers are not required "to commit any act that would put the employer or any person acting on its behalf in violation of Federal law," such as federal contractors. Id.

## Medical Marijuana

- Safety Sensitive
- CDL

## What You Should Know

- The Interactive Process.
- There is no standard template or form for the reasonable accommodation process.
- Individualized inquiry.
- Limit the information sought to what is necessary.
- Why accurate job descriptions are helpful.
- Is additional leave time a reasonable accommodation?
  - Seventh Circuit's 2017 *Severson* case

## What You Should Know

- Employees may be covered by other laws with varying coverage thresholds.
- State disability laws:
  - May or may not follow the same standards.
- FMLA:
  - 50 or more employees.
- Worker's compensation.

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## Thank you.

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District of Pennsylvania

U.S. District Court for the Western  
District of Pennsylvania

U.S. Court of Appeals for the Third  
Circuit

U.S. Supreme Court

**EDUCATION:**

J.D., magna cum laude, University  
of Pittsburgh School of Law, 1994

B.A., magna cum laude, King's  
College, 1991

## Renee C. Mattei Myers

### MEMBER CHAIR, ASSOCIATES COMMITTEE

Renee Mattei Myers focuses her practice on a wide variety of labor and employment matters in state and federal trial and appellate courts throughout Pennsylvania. She has experience defending employers against discrimination claims under Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act, and Pennsylvania Human Relations Act.

Renee represents employers before administrative agencies including the Pennsylvania Human Relations Commission, Equal Employment Opportunity Commission, and the Pennsylvania Department of Labor. She also designs and implements training sessions for managers and supervisors on employment law issues, conducts audits of employer policies, and provides general employment advice to human resource managers in a wide range of industries on matters including hiring, discipline and discharge, family and medical leave issues, wage and hour issues, and reductions-in-force.

Renee serves as the chair of the firm's Associates Committee.

### REPRESENTATIVE MATTERS

- Represented a newly elected district attorney in an age discrimination lawsuit and received summary judgment ruling that was affirmed in the Third Circuit Court of Appeals.
- Received a summary judgment ruling in a race discrimination and harassment lawsuit for a central Pennsylvania entertainment establishment.
- Represented a national educational technical institute in age discrimination and whistleblower lawsuit and was successful in receiving a summary judgment ruling which was affirmed in the Third Circuit Court of Appeals.
- Represented a national communication company in religious discrimination lawsuit in federal court and was granted summary judgment on all claims.
- Successfully represented a large multi-state insurer in state and federal court regarding claims of disability discrimination and ERISA violations.
- Successfully represented a municipality in a series of claims by former employees before the Pennsylvania Human Relations Commission following the sale of the municipality's nursing home facility.

- Designed and implemented a series of full-day training sessions for a private educational institution for all managers and supervisors.

## PROFESSIONAL AFFILIATIONS

- Pennsylvania Bar Association (PBA), Member
- PBA Commission on Women in the Profession, Co-Chair of Executive Council
- PBA Commission on Women in the Profession Mentoring Program, Mentor
- PBA House of Delegates, Former Member
- James S. Bowman American Inn of Courts, Alumnus
- Dauphin County Bar Association (DCBA), Board Member, Personnel Committee Chair, and Past President
- DCBA Young Lawyers Division, Former Chair

## COMMUNITY INVOLVEMENT

- Salvation Army Harrisburg, Women INvolved
- United Way, Women's Leadership Network
- National Multiple Sclerosis Society Leadership Council, Former Member
- Central Pennsylvania Food Bank, Volunteer and Former Board Member
- Girl Scouts in the Heart of Pennsylvania, Service Unit Co-Director, Troop Leader, and Volunteer
- Dauphin County Children and Youth Gifts for Kids Program Coordinator for Eckert Seamans, helping provide Christmas gifts to over 30 children in the foster care system (2002-Present)

## AWARDS AND RECOGNITION

- Selected for inclusion as The Best Lawyers in America 2022 Litigation – Labor and Employment “Lawyer of the Year” in Harrisburg
- Selected for inclusion as The Best Lawyers in America 2020 Litigation – Labor and Employment “Lawyer of the Year” in Harrisburg
- Recognized by Harrisburg Magazine as a “Legal Leader” in Central Pennsylvania
- Recognized by Susquehanna Style magazine as a “Select Lawyer” in Central Pennsylvania
- Recognized by the Dauphin County Bar Association with the DIVA Award for her mentoring, leadership, and involvement with women in the association
- Recognized by the Central Penn Business Journal as one of Central Pennsylvania's Women of Influence
- Chosen as one of the YWCA of Greater Harrisburg's Women of Excellence

- Selected for inclusion in Pennsylvania Super Lawyers
- Selected for inclusion in The Best Lawyers in America for Litigation – Labor and Employment
- Recognized by the Central Penn Business Journal as one of Central Pennsylvania’s “40 under 40”
- National MS Society Leadership Class
- Peer-rated by Martindale Hubble as AV Preeminent

## NEWS AND INSIGHTS

### PUBLICATIONS

- [“’Tis the season: Tips for Keeping It a Happy One for Employees and Employers,”](#) HR Daily Advisor, December 2019.
- [“The Virtual Work Space: What Are the Benefits and Risks?”](#) HR Daily Advisor, September 2019.
- “Guest view: In face of gender pay gap, revisit questions about salary history,” Central Penn Business Journal, November 2017.
- [“Let’s Talk About Sex ... and Salary History,”](#) HR Daily Advisory, September 2017.
- [“Don’t Believe the Hype – The Real Effect of Hobby Lobby on Employers & Employees,”](#) Jurist, July 2014.
- Frequent speaker and author on employment law related topics including the ADA, FMLA, sexual harassment, and employee privacy rights.

### MEDIA COVERAGE

- [“K-12 Vaccine Mandates: What Educators Need to Know,”](#) Tech & Learning, August 2021.
- [“Working At Home VS The Commute,”](#) KDKA Newsradio 1020, June 29, 2021.
- [“Colleges may require COVID-19 vaccination,”](#) WTAE-TV, April 2021.
- [“Vaccine Passports in Higher Ed: 5 Things to Know,”](#) Tech & Learning, April 2021.
- [“Rutgers to require Covid-19 vaccine for students this fall,”](#) CNN.com, March 2021.
- [“Can colleges make students get Covid vaccines? Here’s what experts say,”](#) CNBC.com, February 2021.
- [“N.H. college students among last to receive vaccine,”](#) The New Hampshire, January 2021.
- [“A major chain of senior living facilities will require more than 10,000 workers to get COVID-19 shots,”](#) Business Insider, January 2021.

### SPEAKING ENGAGEMENTS

- [“ADA Accommodations and COVID-19 Vaccines: What Employers Need to Know”](#), co-presenter, Eckert Seamans Zoom Webinar, January 21, 2021.
- [“Key Considerations for Your Next Workplace Investigation,”](#) presenter, Eckert Seamans’ Human Resource Forum, November

2019.

- “Gender, Equal Pay and Salary History,” webinar, Pennsylvania Bar Institute, February 2018.
- “[Employees Behaving Badly: Mistakes Employers Make and How to Fix Them](#),” co-presenter, Eckert Seamans’ Continuing Legal Education Seminar, September 2015.
- “The Confluence of Issues Between the Americans with Disabilities Act and the Family Medical Leave Act,” co-presenter, Eckert Seamans Human Resources Forum, April 2014.
- “Managing Time and Attendance: FLSA, FMLA, Sick Leave,” co-presenter, Pennsylvania State Association of Township Supervisors Human Resources and Labor Management Institute, December 2013.
- “Social Media for Municipal Employers,” co-presenter, Pennsylvania State Association of Township Supervisors Human Resources and Labor Management Institute, December 2013.
- “Overcoming Obstacles to Success ,” panelist, Pennsylvania Bar Association Women in the Profession annual retreat, November 2013.
- “Hot Issues in Social Media – Handling Gripe Content,” co-presenter, Pennsylvania Bar Institute’s 19th Annual Business Lawyer’s Institute, November 2013.
- “The Americans With Disabilities Act and How the Rules of the Game Have Changed for Employers: What the Case Law Is Now Telling Employers,” co-presenter at the Eckert Seamans Human Resources Forum, April 2013.
- “Social Media Use in the Workplace,” presented to the York County Chapter of the Society for Human Resource Management, September 2012.
- “Social Media and Employment Law: Recipe for Disaster or Helpful Tool?,” co-presenter at the Eckert Seamans Human Resources Forum, May 2012.
- “Sexual Harassment, The Basics and Beyond,” Dauphin County Bar Association Lunch and Learn CLE series, March 27, 2012.
- “Unemployment Insurance 101: Assessing and Responding to Claims for U.I. Benefits,” Pennsylvania Bar Institute seminar, December 2010.



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### STATE ADMISSIONS:

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### COURT ADMISSIONS:

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District of Pennsylvania

U.S. Court of Appeals for the Third  
Circuit

U.S. Court of Appeals for the  
District of Columbia Circuit

### EDUCATION:

J.D., Duquesne University School  
of Law, 1996

M.P.I.A. University of Pittsburgh,  
Graduate School of Public and  
International Affairs, 1991

B.A., University of Pittsburgh,  
1989

# Michael McAuliffe Miller

## MEMBER

Michael Miller concentrates his practice exclusively on management-side employment and labor law, including employment and labor-related litigation before a variety of state and federal courts.

## REPRESENTATIVE MATTERS

- In a case testing the proposition of whether the Federal Educational Records Privacy Act (FERPA) prohibits school districts from being compelled to release video recordings of students under the Right to Know Law, Mr. Miller secured an order from the Supreme Court of Pennsylvania which vacated an earlier Commonwealth Court opinion granting access to such recordings and directed to the Commonwealth Court to reconsider its opinion. *Central Dauphin School District v. Valerie Hawkins, Fox43 and the Commonwealth of Pennsylvania, Office of Open Records*, 16 MAL 2019, Pa Supreme Court (2020).
- Arguing in front of the United States District Court of Appeals for the District of Columbia, Mr. Miller obtained a decision vacating an order of the National Labor Relations Board imposing a significant back pay remedy stemming from an enforcement proceeding brought by the NLRB's General Counsel. *Pennsylvania State Corrections Officers Association v. National Labor Relations Board*, Case No 16-1328 (D.C. Cir. July 6, 2018).
- While representing a Pennsylvania school district as Special Counsel, successfully advocated for Pa. Supreme Court to overturn Commonwealth Court and, while so doing, to conclusively re-affirm the doctrine of constructive discharge in Pa. and determine the due process owed public school superintendents under Section 1080 of the School Code. *Kegerise v. Delgrande, et. al*, \_\_\_ S.Ct. \_\_\_ (2018).
- Secured the dismissal of a request for an injunction made by a disappointed bidder who sought to block the City of Lebanon Authority from awarding a \$37-million contract for the reconstruction of its Waste Water Treatment Plant.
- Served as Chief Labor Counsel for a New Jersey for-profit corporation that purchased the Meadowlands Health Center from a nonprofit health system. Negotiated successor labor agreements with four unions and transitioned 400+ employees to new employment avoiding litigation and disruptions to closing.
- Served as Special Labor Counsel for privatization of Dauphin County's Youth Detention Center and nursing homes previously

operated by Schuylkill and Washington counties.

- Successfully defended a New Jersey Acute Care Hospital in unionization drive and secured dismissal of representation petition without a union election.
- Served as General Counsel of a Pennsylvania college for 10+ years.
- Selected as Special Labor Counsel for Eastern Pennsylvania by the Society of County Human Resources Professionals of Pennsylvania.
- Selected as Special Labor Counsel for the Pennsylvania State Association of Boroughs.
- Represented national and regional employers in the manufacturing, construction, trucking, public utility, insurance, food, education, and health care industries.
- Litigated to verdict various employment-related litigation, including claims of race, age, disability, and gender discrimination; sexual harassment; wrongful discharge; and breach of contract, and sustained these results on appeal to federal and state appellate courts.
- Developed effective and efficient strategies to resolve matters before federal and state administrative agencies, including the National Labor Relations Board, Equal Employment Opportunity Commission, and Pennsylvania Human Relations Commission.
- Regularly negotiates labor agreements with the Fraternal Order of Police, International Association of Fire Fighters, AFSCME, SEIU, IBEW, the Teamsters, the Steelworkers, and the Building Trades, among other unions.
- Served (in the public sector) as special labor counsel to a number of municipal employers at the state, county, city, borough, and township level and represented those entities in collective bargaining negotiations, contract interpretation claims, discipline matters, interest arbitrations, grievance arbitrations, unfair labor practice charges, and employment-related litigation.

## PROFESSIONAL AFFILIATIONS

- Allegheny County Bar Association Ethics, Headquarters, and Nomination Committees, Former Member
- Pennsylvania Bar Association House of Delegates, Former Member

## COMMUNITY INVOLVEMENT

- The Wildcat Foundation, Board Member
- Vice Chancellor and Member of Council of Trustees, Ex Officio, Episcopal Diocese of Central Pennsylvania

## AWARDS AND RECOGNITION

Selected for inclusion in:

- *Pennsylvania Super Lawyers – Rising Star*

- *Law and Politics Magazine's* Top 40 PA Lawyers Under 40

## NEWS AND INSIGHTS

### PUBLICATIONS

- [“Pennsylvania Department of Labor and Industry Submits Its Final Overtime Rule for Approval.”](#) Eckert Seamans’ Labor & Employment Alert October 2019.
- [“All Pennsylvania Borough Police Have Civil Service Rights.”](#) Eckert Seamans’ Labor & Employment Update July 2019.
- “Act 44: Improving School Safety,” co-authored for the Pennsylvania Borough News, November 2018.
- [“Sexual harassment isn’t my problem \(until it is\).”](#) Eckert Seamans’ Construction Law Update, Spring 2018.
- [“Sexual harassment isn’t my problem \(until it is\): Guest view,”](#) Central Penn Business Journal, January 2018.
- [“What Pennsylvania employers need to know about medical marijuana,”](#) Eckert Seamans’ Construction Law Update, Fall 2017.
- [“Getting it Right the First Time: Holding Unions Accountable to Contractual and Statutory Time Limits,”](#) SCHRPP Quarterly, April 2013.
- [“Did the Commonwealth Court Sweep Away the Ability to Bargain Over Changes to Post-Retirement Health Benefits?”](#) SCHRPP Quarterly, June 2012.
- [“The Facebook Firing Case,”](#) SCHRPP Quarterly, January 2011.
- “A New Frontier for 1620 Rights?” SCHRPP Quarterly, October 2010.

### MEDIA COVERAGE

- [“A Friend of the Court: PSATS’ Legal Defense Partnership Represents Townships on a Host of Issues Before the Courts,”](#) PA Township News, November 2020.
- “Ask the Lawyer: Live Online Chat with Michael McAuliffe Miller,” The Central Penn Business Journal, 2014.
- “Companies Fight Against Texting and Driving,” Risk and Insurance Online, 2012.
- “New Year, New Policy Challenges,” SHRM Online, 2011.
- “Rethink social media policies in light of NLBR complaint, lawyers say,” American Medical News, 2010.
- “Chilling Worker Speech on Facebook,” Human Resource Executive Online, 2010.
- “Hospitals Responsible for Physicians’ Bad Behavior,” Health Leaders Media, 2010.

### SPEAKING ENGAGEMENTS

Michael is a regular speaker at Continuing Legal Education programs and professional conferences for numerous organizations, including the Pennsylvania State Association of Township Supervisors, Pennsylvania State Association of Boroughs, County Commissioners Association of Pennsylvania, Pennsylvania Chiefs of Police Association, Society of County Human Resource Professionals of Pennsylvania, and Human

Resources and Labor Management Institute. His presentation topics have included:

- You're Wrong: Problems in the County Workplace and How to Solve Them
- Just Exactly Where Are We Now? A Review of Municipal Labor and Employment Law in 2021
- [Summer School is in Session: What Pennsylvania School Districts Need to Know About ESSER Relief Funds](#)
- Reviewing the American Rescue Plan Act
- Grievance Handling and Arbitration
- Reviewing the American Rescue Plan Act
- Vaccines and Employment Issues During COVID
- The Unthinkable – Coronavirus and Employees
- Pennsylvania's New Medical Marijuana Law: What Employers Need to Know Now
- Trends in Higher Education Bargaining (co-presented with Dr. Ken Mash at Joint Statewide Conference for Pennsylvania Bureau of Mediation & Pennsylvania Labor Relations Board)
- Police Liability and Body Cameras
- Winning at Mediation and Arbitration
- The Difficult Employee: Attendance and Performance
- The Monster Under Our Beds: Bad Language in CBAs
- Developing and Updating Comprehensive, Legal Employee Handbooks and Job Descriptions
- The Right Way to Hire and Fire Your Employees
- How the NLRB is Remaking Labor Relations in America
- Social Media in the Post-Quon World
- Five (Not So) Easy Pieces: Bad Employment Law Situations for County Solicitors
- Conducting a Workplace Audit
- Alphabet Soup: FMLA, ADA and Workers Compensation
- When Did I Start Working For The Style Channel? Dress Codes, the Public Sector, and the Law