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# Human Resource Executive®

## The Best Defense

**HRE PRESENTS AN EXCLUSIVE LIST OF THE NATION'S MOST POWERFUL EMPLOYMENT ATTORNEYS, ALONG WITH EXPERTS' TIPS FOR HIRING YOUR OWN.**

**BY SCOTT FLANDER**

**W**hen you're in trouble, finding a good management attorney is a lot like finding a good doctor.

You have to go for the best.

And like a search for a doctor, it's risky to rely on dumb luck. You have to be willing to do **continued on inside**



Mark S. Dichter  
Lawrence C. DiNardo  
Dennis P. Duffy  
Howard L. Ganz  
Paul Grossman  
Lynne C. Hermle  
W. Carl Jordan

**William J. Kilberg**

**Garry Mathiason**

**Theodore O. Rogers Jr.**

# CHOOSING THE RIGHT EMPLOYMENT ATTORNEY CAN BE CRITICAL TO AN ORGANIZATION'S SURVIVAL AND REPUTATION. SO SAY SOME OF THE VERY BEST, ACCORDING TO AN EXCLUSIVE *HRE* LIST.

some real research, and to ask some tough questions. It takes work.

But if you find the right lawyer—someone who can help your company avoid a potentially devastating trial, or win it if necessary—the effort will be more than worth it.

In August, *Human Resource Executive*<sup>®</sup> invited you to meet the top 10 plaintiffs' attorneys. Now, we present the top 50 management attorneys (see pages 29 and 30), including the top 10 cream of that crop (see pages 26 and 28) in lists that were prepared exclusively for the magazine by Lawdragon, a Los Angeles-based networking site for lawyers and clients.

Since these lists represent the best of the best, and embody the qualities that HR leaders should look for when picking a defense lawyer, we figured we'd ask several of those featured for their own tips on how to find a top attorney.

They all agreed that while skill and experience are essential, a good management lawyer is someone who becomes a partner with the HR executive, someone who fully understands and is committed to the company's objectives.

"What you ought to want," says William J. Kilberg, a partner with Gibson Dunn in Washington, "is somebody who is going to take over your problem and make it their problem, and do everything they can to resolve it in a way you're comfortable with."

That is not as easy as it sounds. Too often, the attorneys say, HR leaders pick an attorney on someone else's recommendation, without doing much research. By the time they discover the lawyer isn't a good fit, it's often too late.

"Make sure the lawyer will not view your litigation as a law-firm asset—as a cash cow to be milked," says Paul Grossman, a partner with Paul Hastings in Los Angeles.

That kind of lawyer, he says, encourages a client to "litigate like mad, but then, after running up high attorneys' fees, says, 'We better settle.'"

To weed that kind of lawyer out of the

mix, Grossman recommends calling the lawyer's references and "quizzing them about every aspect of the relationship."

Ask about the lawyer's "competence, service, cost and effectiveness," he says.

Those kinds of questions will also help the HR executive find a lawyer "who views things entirely from the client's perspective," Grossman says. Someone who, for example, might recommend an early settlement in a risky case, to save the company money.

By the same token, he adds, it's up to the HR leader to ask the attorney the hard questions. How much will the attorney's fees be through the request for summary judgment? What are the odds of getting the case thrown out? What are the odds the company could win a trial, and how much would that cost?

HR executives should press the lawyers on the cost and odds of reaching each step of the case, says Grossman.

## The Right Fit

According to Kilberg, there are specific things HR leaders need to keep in mind to make sure the lawyer has the approach that's right for the company.

"Are you looking for a bulldog, or are you looking for a charmer?" he says.

"What do you think you need? Are you looking for someone to resolve the problem, or do you already know how you want the problem resolved, and you're looking for someone to effectuate it?"

The first step, Kilberg says, is understanding what kind of case you have, and exactly what you're trying to achieve.

Are you seeking, for example, a defense of your core business model, or simply a quick resolution to a time-consuming annoyance? Or, perhaps you're looking for "a sensible restructuring of the workforce, or the acquisition of a company and the integration of two workforces."

Once you have a good understanding of what you specifically need, you can look for a lawyer who will help you meet your objectives, Kilberg says.

He suggests looking at a prospective lawyer's resume to identify other companies he or she has worked with, and then calling HR executives there—hopefully, people you know.

Ask those executives probing questions, he says. "Were these cases settled? Did you feel you paid too much or too little? Did he work well with your people? Did he work well with opposing counsel? Is this somebody who will tell you what you need to know, or is this somebody who will tell you what you want to hear?"

Another question to ask: Was the lawyer arrogant?

"I don't think lawyers who strut and talk tough are the best lawyers," he says. "You want someone who can communicate with opposing counsel. You don't want to get into a war unnecessarily. You don't want the other side out to get you because they don't like your lawyer. It happens all the time."

Lynne Hermle, a partner with Orrick, Herrington & Sutcliffe, in Menlo Park, Calif., says HR leaders should look for lawyers who want to understand a company's business goals, and how the litigation fits in.

The lawyer, she says, should be asking questions about your product cycle, your culture, how the litigation might affect recruiting.

"The lawyer you hire has to be a match for your business needs and philosophy," she says. "Sometimes, not every lawyer is right for the job."

The top attorneys say it's essential that a management attorney have experience in the specific kind of case he or she is being hired for.

One of the worst things is to have a lawyer who has handled only one or two relevant cases, "and is learning on your expense," says Garry Mathiason, a partner with Littler Mendelson in San Francisco and a reputed authority on HR and employment-law trends in the United States. HR leaders should look for a lawyer or law firm that has handled dozens of similar cases.

In addition, says Mathiason, an ideal attorney is one who "embraces"

the technological revolution that is sweeping HR law. There is a great deal of regulatory and other information now available through databases, and it's cheaper and more accurate than ever. But an attorney has to know how to use the technology, he says. Questions about computer use and experience will help reveal the extent of this knowledge going into the relationship.

Katrina Dewey, the CEO of Lawdragon, encourages HR leaders to do as much research as possible on a prospective attorney, including closely examining his or her resume.

One thing to look for, she says: whether the attorney chairs a practice

area—such as labor and employment—for the law firm. “This shows the partners are recognizing that this is a substantial person,” says Dewey.

Another qualification is a substantial number of years in practice. Attorneys with less than 10 years of experience “just don’t know the ropes,” she says. “You can be competent in 10, but you can’t be great in less than 15.”

Resumes will also show whether an attorney is highly rated by organizations that do research on lawyers. In addition to Lawdragon, says Dewey, the lists to look for are the Legal 500 and Chambers, and those published by magazines and newspapers.

Whether he or she is a member of the College of Labor and Employment Lawyers can be another sign a lawyer is tops, she says. Membership in the College—an elite organization of top attorneys that admits new members, through a vote, after thorough research—is “one of the top two or three most important things” Dewey says she looks for in evaluating an attorney.

Resumes alone cannot provide a full picture of a lawyer’s qualifications, she says, “but they should give you a framework of what questions to ask.”

*Send questions or comments about this story to [hreletters@lrp.com](mailto:hreletters@lrp.com).*

Top  
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## Leaders of the Pack

*Human Resource Executive*® and Lawdragon have determined the following 10 employment attorneys to be at the very top of their profession based on curriculum-vitae analyses, evaluations by clients and peers, and other various criteria.



**Theodore O. Rogers Jr.**  
Partner, Chair of Employment and Labor Group  
Sullivan & Cromwell, New York

**Background/Achievements:** Rogers joined the firm in 1979 after receiving his juris doctorate from Harvard University (where he also earned his bachelor’s degree), and has been a partner since 1987. He’s been named as one of the New York Super Lawyers for 2006 and 2007, one of the Best Lawyers in America for 2006 and 2007, and Chambers USA: America’s Leading Lawyers for Business for 2003 through 2007. He is a fellow of the College of Labor and Employment Lawyers, a member of the executive committee of the New York State Bar Association’s Labor and Employment Law Section and a member of the advisory board of the Center for Labor and Employment Law of New York University School of Law. Key cases include *Vizcaino vs. Microsoft* and *Hughes vs. Microsoft*, involving independent-contractor class-actions; and *AFTRA vs. NBC*, in which he defended MSNBC Cable against a petition to unionize news anchors.

**Biggest HR Mistake He’s Seen in His Career:** HR executives moving too quickly to implement major employment changes due to an unwillingness to confront management with the need to do it right rather than fast. Also, HR practitioners giving employees the impression that their internal complaints will be kept in complete confidence, thereby complicating the employer’s ability to investigate.

**Most Significant Change or Development in Employment Law He’s Seen in His Career:** The “overlawyering” of the workplace; the inclination of employees to make a federal (or state) case out of any workplace controversy or adverse decision has increased substantially in recent years.

Top  
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## The Nation's 50 Most Powerful Employment Attorneys

The following list was prepared exclusively for *Human Resource Executive*® by Lawdragon, a Los Angeles-based networking site for lawyers and clients. The attorneys, listed in alphabetical order, were selected on the basis of curriculum-vitae analyses, evaluations by clients and peers, and reporting by the Lawdragon staff. ✓ indicates the attorney is profiled as one of the Top 10 Employment Attorneys on pages 26 and 28.

Name/Title	Law Firm	City	Law School	Year Degree Received	Years in Practice	Description of Practice and Specialties
<b>Nancy L. Abell</b> Partner, Chair of Employment Law Department	Paul Hastings	Los Angeles	UCLA	1979	29	Employment litigation, including class-actions and advice representing employers
<b>Rory Judd Albert</b> Partner, Chair of Employee Benefit and Executive Comp Group	Proskauer Rose	New York	Columbia	1977	31	Employee benefits, ESOPs and executive compensation
<b>Rosemary Alito</b> Partner	K&L Gates	Newark, N.J.	Rutgers	1978	30	Employment litigation, including discrimination, wage-and-hour and ERISA class-action defense
<b>John-Edward Alley</b> Of Counsel	Ford & Harrison	Tampa, Fla.	University of Florida	1965	43	Employment litigation, including administration and court actions
<b>R. Lawrence Ashe Jr.</b> Partner	Ashe, Rafuse & Hill	Atlanta	Harvard	1967	41	Employment class and collective actions, with additional focus on employment testing issues
<b>Barbara Berish Brown</b> Partner	Paul Hastings	Washington	Yale	1971	37	Employment litigation, with class-action, executive employment and government agency investigation expertise
<b>William L. Cole</b> Partner	Mitchell Silberberg	Los Angeles	Stanford	1977	31	Traditional labor law and employment litigation, including wage-and-hour and discrimination class-actions
<b>Francis X. Dee</b> Partner	McElroy Deutsch	Morristown, N.J.	Catholic University of America	1969	39	Employment litigation, including class-actions and discrimination
<b>Michael Deikat</b> Partner, Chair of Global Employment Law Practice	Orrick Herrington	New York	Harvard	1977	31	Employment litigation and trial practice, focusing on class-action and high-exposure cases, including discrimination, wage-and-hour, trade secrets and whistleblower defense
✓ <b>Mark S. Dichter</b> Partner, Chair of Labor and Employment Practice	Morgan Lewis	Philadelphia	Villanova	1969	39	Employment class and collective actions, and high-profile employment cases
✓ <b>Lawrence C. DiNardo</b> Partner	Jones Day	Chicago	Notre Dame	1974	34	Employment litigation, including class-actions, disability discrimination and union organizing
✓ <b>Dennis P. Duffy</b> Partner	Baker Botts	Houston	University of Virginia	1982	26	Labor and employment counseling and litigation, including discrimination, unfair labor practices, trade secrets and noncompetition litigation, wage-and-hour, safety-and-health and Sarbanes-Oxley whistleblower actions
<b>Scott Dunham</b> Partner, Chair of Labor and Employment Law Practice	O'Melveny & Myers	Los Angeles	University of Washington	1975	33	Employment litigation and counseling, including for example, wage-and-hour, wrongful discharge, whistleblowing, safety-and-health, harassment and discrimination
<b>Samuel Estreicher</b> Professor	New York University	New York	Columbia	1975	33	Law professor and director of NYU's Center for Labor and Employment
<b>Mark J. Foley</b> Partner, Chair of Labor and Employment Group	Cozen O'Connor	Philadelphia	Villanova	1987	21	Collective bargaining, whistleblower, ADA and other employment claims
<b>Columbus 'Chris' Gangemi</b> Partner	Winston & Strawn	Chicago	Villanova	1973	35	Employment litigation and counseling, including appellate advocacy
✓ <b>Howard L. Ganz</b> Partner, Co-Chair of Employment Law Department	Proskauer Rose	New York	Columbia	1966	42	Employment litigation, including sports litigation on behalf of professional leagues
<b>Willis J. Goldsmith</b> Partner	Jones Day	New York	New York University	1972	36	Employment and labor litigation and counseling
<b>Brian S. Greig</b> Partner	Fulbright Jaworski	Austin, Texas	University of Texas	1975	33	Employment litigation, including trade secrets and restrictive covenants
✓ <b>Paul Grossman</b> Partner	Paul Hastings	Los Angeles	Yale	1964	44	Employment litigation, especially class-action defense
<b>C. Lash Harrison</b> Partner	Ford & Harrison	Atlanta	Emory	1965	43	Employment litigation and labor relations
✓ <b>Lynne C. Hermle</b> Partner	Orrick Herrington	Menlo Park, Calif.	UC Hastings	1981	27	Employment litigation, with wage-and-hour and class-action expertise
<b>Jerry M. Hunter</b> Partner	Bryan Cave	St. Louis	Washington University	1977	31	Employment litigation and preventive labor relations
<b>Charles C. Jackson</b> Partner	Morgan Lewis	Chicago	Northwestern	1977	31	Complex labor, employment and employee-benefits litigation, especially class and collective actions

## Top 50 Employment Attorneys continued

Name/Title	Law Firm	City	Law School	Year Degree Received	Years in Practice	Description of Practice and Specialties
✓ <b>W. Carl Jordan</b> Partner, Co-head of Employment Law Section	Vinson & Elkins	Houston	Harvard	1974	34	Employment litigation
✓ <b>William J. Kilberg</b> Partner	Gibson Dunn	Washington	Harvard	1969	39	Employee relations and compensation and benefits, with speciality in appellate advocacy
<b>Jeffrey S. Klein</b> Partner, Chair of Employment Litigation Practice	Weil Gotshal	New York	Columbia	1981	27	Employment litigation, especially discrimination, healthcare benefits and trade-secrets litigation
<b>Stephen T. Lindo</b> Partner, Chair of Executive Comp and Employee Benefits Department	Willkie Farr	New York	Boston University	1974	34	Negotiation of benefit and employment issues in reorganizations, mergers and acquisitions, and severances
<b>Arline Mann</b> Managing Director	Goldman Sachs	New York	Brooklyn Law School	1979	39	In-house specialist overseeing employee issues
<b>Tom Mars</b> General Counsel	Wal-Mart	Bentonville, Ark.	University of Arkansas	1985	23	As head of in-house department for the nation's largest employer, battles huge employment lawsuits
<b>William C. Martucci</b> Partner, Leader of National Employment Group	Shook Hardy	Kansas City, Mo.	University of Arkansas	1977	31	High-stakes employment litigation, especially class-actions and compliance issues
✓ <b>Garry Mathiason</b> Partner	Littler	San Francisco	Stanford	1971	37	Employment litigation, wage-and-hour, and corporate compliance
<b>Barbara Nims</b> Partner	Davis Polk	New York	University of Virginia	1983	25	Executive compensation, stock-based incentive, deferred compensation and pension plans
<b>Theodore A. Olsen</b> Partner	Sherman & Howard	Denver	University of Colorado	1978	30	Workplace violence, wrongful discharge and immigration litigation
<b>Camille A. Olson</b> Partner, National Chairperson of Complex Discrimination Litigation Practice Group	Seyfarth Shaw	Chicago	University of Michigan	1983	25	Employment class-actions, especially independent contractor, discrimination, union and wage-and-hour claims
<b>Bettina B. Plevan</b> Partner	Proskauer Rose	New York	Boston University	1970	38	Employment litigation, including discrimination and class claims and defense of law firms
<b>James R. Redeker</b> Partner, Chair of Employment Services Practice Group	Wolf Block	Philadelphia	University of Pennsylvania	1968	40	Employment litigation and counseling
<b>Michael Reiss</b> Partner	Davis Wright	Seattle	Yale	1968	40	Race and sex discrimination, and wage-and-hour class-actions
✓ <b>Theodore O. Rogers Jr.</b> Partner, Chair of Employment and Labor Group	Sullivan & Cromwell	New York	Harvard	1979	29	Employment litigation and counseling
<b>Paul Salvatore</b> Partner	Proskauer Rose	New York	Cornell	1984	24	Collective bargaining/labor-management relations, employment law, litigation and counseling
<b>Eugene Scalia</b> Partner, Co-chair of Labor and Employment Practice Group	Gibson Dunn	Washington	University of Chicago	1990	18	Employment litigation, including class-actions and whistleblower matters
<b>Stewart J. Schwab</b> The Allan R. Tessler Dean and Professor of Law	Cornell University Law School	Ithaca, N.Y.	University of Michigan	1980	28	Law professor focusing on labor and employment matters
<b>Max J. Schwartz</b> Partner, Chair of Executive Comp and Benefits Group	Sullivan & Cromwell	New York	University of Michigan	1973	35	Executive compensation, employee benefits, planning, compliance and transactional advice (tax, securities and labor)
<b>Richard C. Shea</b> Partner	Covington & Burling	Washington	University of Virginia	1983	25	Employee benefits and executive compensation, especially cash balance, pension equity and other complex benefit-plan designs
<b>Charles R. Smith</b> Partner	K&L Gates	Pittsburgh	University of Pittsburgh	1974	34	Corporate transactions involving ESOPs, fiduciary duties and executive compensation
<b>Grace Speights</b> Partner, Chair of Complex Employment Litigation Practice	Morgan Lewis	Washington	George Washington University	1982	26	Employment litigation and counseling, focusing on employment discrimination class-action litigation
<b>Nina G. Stillman</b> Partner	Morgan Lewis	Chicago	Northwestern	1973	34	Employment class-actions, including restrictive covenants, health-and-safety and cross-border claims
<b>Patrick Vaccaro</b> Partner	Jackson Lewis	New York	New York University	1969	39	Employment counseling and litigation, including wage-and-hour, discrimination and class-actions
<b>Jay W. Waks</b> Partner	Kaye Scholer	New York	Cornell	1971	37	Class and collective employment actions, including Fair Labor Standards Act, Sarbanes-Oxley and whistleblower claims
<b>John F. Wymer III</b> Partner	Paul Hastings	Atlanta	University of Virginia	1974	34	Employment litigation, traditional labor law, wage-and-hour and other class-actions

# The Selection Process

In a country of 1.1 million lawyers, roughly 10 percent of whom have some involvement with labor and employment matters, how do you identify the cream of the crop?

That's the question Lawdragon has been answering in 100 practice fields since it was founded in 2005 to provide a "consumer reports" of lawyers and judges, says Katrina Dewey, CEO and publisher of the Los Angeles-based networking site for lawyers and clients. The journalists on our staff have been creating "best of" lists since 1990, she adds.

To identify the leading lawyers for labor and employment—management-side—for *Human Resource Executive*® magazine, Lawdragon first turned to its database of the more than 150,000 attorneys it has researched and vetted, and pulled those who specialize in representing corporations in labor matters (as opposed to those who specialize in suing corporations on behalf of aggrieved employees).

More than 20,000 lawyers nationwide were e-mailed to ensure the research was as inclusive as possible. Submissions were then collected from peers, clients, judges, marketing professionals and lawyers themselves, and Lawdragon set to work researching the resume and achievements of each attorney whose name was submitted, weighing him or her against one another as well as the opinion of clients.

For the *HRE* list, a few key achievements are virtually essential: An attorney has to be a law firm partner who has practiced for 20 years; in all likelihood, he or she chairs the firm's labor and employment group, or, at some juncture, did; most likely, he or she belongs to the College of Labor and Employment Lawyers, the most important member-only association for this practice specialty. In addition, this type of attorney has headline clients who he or she is steering through the toughest issues facing employers: backdating, wage-and-hour, and class-actions for discrimination, among others. In addition, for this exclusive *HRE* guide, Lawdragon included a handful of lawyers who specialize in employee benefits and other associated financial structuring due to the importance of executive compensation and the emergence of pension funds and other investment vehicles.

"While these are not the lawyers who traditionally populate the 'best of' employment lists, we assure you they play tremendously powerful roles in today's workplace," says Dewey.

"As we whittled away to the top 50 [displayed on pages 29 and 30], we conducted our most important acid test: We asked those lawyers who are the consensus top labor lawyers in the country—and their counterparts in the plaintiff bar—which lawyer they would turn to with an employment problem," she says. "Second, we asked which of these lawyers they would be proud to be featured alongside in this list.

"That's a tough standard to meet—like asking which car you'd trust to carry your family."

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