

JOSEPH E. GUMINA

Joseph Gumina is a shareholder at O'Neil Cannon and the Past Chair of O'Neil Cannon's Labor and Employment Practice Group. Joe is licensed to practice law in the states of Illinois and Wisconsin. Joe has extensive experience representing management in a vast array of employment matters ranging from traditional labor matters involving labor negotiations and unfair labor practice charges to helping employers navigate the complexities of state and federal fair employment laws.

Joe has significant experience as a seasoned litigator having tried cases to juries in both federal and state courts achieving resounding success for his clients. He has also represented the interests of his clients in other parts of the country, including Florida, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, Ohio, New York, and Utah.

Joe Assists Clients With

- Employment Discrimination Litigation
- Non-Competition and Trade Secret Litigation
- Appellate Matters before the United States Court of Appeals for the Seventh Circuit, the Appellate Court of Illinois, and the Wisconsin Court of Appeals
- Collective Bargaining Negotiations
- Union Grievance and Labor Arbitration Proceedings
- NLRB and Unfair Labor Practice Matters
- Union Issues Regarding Acquisitions, Plant Relocations, and Plant Closings
- Occupational Safety and Health Matters
- Wage and Hour Issues
- Proper Employment Practices to Avoid Litigation
- Employment Policy Drafting and Review



Attorney Image



Attorney Thumb

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Other Information

Experience/Representative Client Work

- Successfully defended employer in a labor arbitration proceeding where the union alleged that the employee's Weingarten rights were violated and was terminated without just cause. *See Telsmith, Inc.*, 137 BNA LA 266 (12/18/16).
- Successfully defended a claim made under Wisconsin's Business Closing Law relative to an employer's requirement to cease operations with less than 60 days' prior notice.
- Successfully defended a Minnesota employer on a Motion for Preliminary Injunction filed in U.S. District Court based upon a claim of trade secrets misappropriations under Wis. Stat. § 134.90
- Successfully defended an Illinois employer at trial and again at the Court of Appeals against a \$400,000 claim of tortious interference with prospective economic advantage based upon the allegation that the employer attempted to enforce an unenforceable non-competition agreement
- Successfully defended a Wisconsin employer before the Department of Workforce Development, Circuit Court of Sauk County, U.S. District Court for the Western District of Wisconsin and the Wisconsin Court of Appeals against an employee who engaged in

a campaign of vexatious litigation which resulted, ultimately, in a money judgment being entered against the employee

- Successfully reversed a decision by an administrative law judge awarding an employee \$191,649 in damages on a retaliation claim and successfully defended the reversal of the judgment in the Utah Court of Appeals. *See Carter v. Labor Commission Appeals Board*, 2006 UT App 477 (Utah Ct. App. 2006)
- Successfully defended an employer in the U.S. District Court for the Northern District of Illinois in a jury trial by convincing the court to dismiss the case pursuant to Rule 50, a motion after verdict, on the grounds that the plaintiff did not meet her burden of proof in establishing a case of sex discrimination. *See Hossack v. Floor Covering Associates of Joliet*, 2004 WL 2423825 (N.D. Ill. 2004)
- Successfully obtained dismissal of suit against individual business owner by union trust fund by convincing the federal district court that the alleged state law claims were preempted by § 301 of the Labor Management Relations Act. *See Shales v. Asphalt Maintenance, Inc.*, 176 LRRM 2250 (N.D. Ill. 9/28/04).
- Successfully obtained summary judgment for an Illinois employer in the U.S. District Court for the Northern District of Illinois against an employee alleging that her assignment to a temporary light duty position, as a reasonable accommodation, entitled her to a permanent job position. *See Ulatowski v. John Sterling Corp.*, 2004 WL 1385829 (N.D. Ill. 2004)
- Successfully obtained summary judgment for an Indiana employer in the U.S. District Court for the Southern District of Indiana against an employee claiming racial harassment and discriminatory discharge. *See Motley v. Tractor Supply Co.*, 32 F.Supp.2d 1026 (S.D. Ind. 1998)
- Successfully obtained permanent injunctive relief in Cook County Circuit Court for an employer harassed and threatened by a Chicago area local union conducting mass protests on the employer's property
- Argued case of first impression before the Appellate Court of Illinois regarding the retroactive effect of the 1996 amendments to the Illinois Human Rights Act. *See Bowne of Chicago, Inc. v. Human Rights Commission*, 301 Ill.App.3d 116, 703 N.E.2d 443, 234 Ill. Dec. 582 (1st Dist. 1998)
- Successfully defended a major regional airline in the U.S. District Court for the Western District of Wisconsin by obtaining summary judgment against a pilot alleging a claim under the ADA when the airline would not accommodate the pilot's inability to sit for a specified period of time based upon safety concerns
- Substantially reduced OSHA penalties and eliminated all willful violations for a Kentucky employer cited for violations of OSHA's lockout/tagout standard where an employee had received life-threatening injuries following an explosion of a plastic injection molding machine
- Substantially reduced OSHA penalties and eliminated all willful violations for an Ohio employer cited for various violations related to the death of an employee crushed by a forklift

- State Bar of Wisconsin
- Illinois State Bar Association

Court Admissions

- Wisconsin
- Illinois
- U.S. Court of Appeals, Seventh Circuit
- U.S. District Court for the Eastern District of Wisconsin
- U.S. District Court for the Western District of Wisconsin
- U.S. District Court for the Northern District of Illinois (Trial Bar)
- U.S. District Court for the Central District of Illinois
- U.S. District Court for the Northern District of Indiana
- U.S. District Court for the Southern District of Indiana
- U.S. District Court for the Eastern District of Michigan

Awards/Distinctions

- Selected for inclusion in Wisconsin Super Lawyers, *Law and Politics* and *Milwaukee Magazine*, 2014–2023
- Selected for inclusion in *The Best Lawyers in America*®–Litigation-Labor and Employment, 2018–2024



Articles/Presentations

- Quoted, "Mandatory Overtime Impacts FMLA Compliance" *SHRM HR Daily Newsletter* (June 2023)
- Author, "COVID-19 Vaccination Mandates: What Now?" *The Wisconsin Lawyer* (March 2022)
- Presenter, "New Proposed FLSA Overtime Regulations," Business Owners And HR Professionals–Greater Milwaukee Area and Green Bay (Spring 2019)
- Presenter, "FLSA Update–What Every Employer Needs to Know About FLSA Compliance," Business Owners And HR Professionals–Greater Milwaukee Area and

Appleton (Fall 2018)

- Presenter, "Labor, Employment and Benefit Law Update," Business Owners And HR Professionals–Greater Milwaukee Area (Spring 2018)
- Presenter, "New FLSA Overtime Regulations," Business Owners And HR Professionals–Greater Milwaukee Area (Spring 2016)
- Contributing Author, "Guidelines for Drafting Specific Contract Clauses in Employment Agreements," Karen Botterud (ed.) *Illinois Contract Law*, 2016 Edition IICLE, Chapter 8
- Speaker, "Labor and Employment Issues for the Hospitality Industry," *Hospitality Finance And Technology Professionals*–Greater Milwaukee, 2015
- Co-Author, "Education on Unpaid Internships for the In-House Counsel," *InsideCounsel Magazine*, 2015
- Co-Author, "Paying Employees Correctly Under the FLSA with Preliminary and Postliminary Activities," *InsideCounsel Magazine*, 2015
- Co-Author, A Primer for Inside Counsel on Donning and Doffing Under the FLSA, *InsideCounsel Magazine*, 2015
- Co-Author, "Unpacking the Surprisingly Tricky 'Regular Rate' in Overtime Calculation," *InsideCounsel Magazine*, 2015
- Co-Author, "A Primer for Inside Counsel on Meeting FLSA Overtime Exemption Tests," *InsideCounsel Magazine*, 2015
- Co-Author, "Independent Contractors–Avoiding Misclassification Under the FLSA," *InsideCounsel Magazine*, 2015
- Speaker, *Legal Advice*, "Latest Developments in Labor and Employment Law," HFTP Greater Milwaukee Chapter, March 2015
- Editor, Chief–*Illinois Employers' Management Handbook*, published by Illinois Chamber of Commerce, 2010
- Quoted in: "Supreme Court to Review Wal-Mart Policy of Hiring Only the Best," by Allen Smith, J.D., *HR Magazine* atshrm.org-Workplace Law Library, May 2008
- Selected Speaker, "E-Discovery: An Employer's Guide to Managing Electronic Data in a Litigious World," BNA, Nationally Broadcasted Webinar, April 2008
- Contributing Author, "Guidelines for Drafting Specific Contract Clauses in Employment Agreements," Karen Botterud (ed.) *Illinois Contract Law*, 2008 Edition IICLE, Chapter 19
- "Workplace Diversity: Defining Success Goes Beyond Numbers", *Business Law News*, February 2008
- "The EEOC May Consider Your Severance Agreement Unlawful Retaliation," *Wisconsin Law Journal*, July 2007
- "Non-Compliance with the Smoke Free Illinois Act will be Costly to Employers," Illinois Chamber of Commerce, January 2008
- Contributing Author, "The OSH Act, Workers' Compensation, and Workplace Tort Liability," Randy S. Rabinowitz (ed.), *Occupational Safety and Health Law*, 2d Edition, BNA, Chapter 23, 2002
- Co-Author, "Overtime Overview: A Look at the Proposed Overtime Rules," Joseph E. Gumina and Michael J. Pulcanio, *Ill. B.J.*, Volume 91 No. 10, pp. 521-22, 529, October 2003

- Volunteer, Milwaukee Justice Center
- Volunteer, Personnel Committee-Inspirio Youth Ministries

In The News

- Super Lawyers Recognizes 30 O'Neil Cannon Attorneys
- 20 O'Neil Cannon Lawyers Selected as 2025 Best Lawyers; Another 5 Named Best Lawyers: Ones to Watch
- What Employers Should Do Regarding the Looming Effective Date of the FTC's Non-Compete Ban
- Super Lawyers Recognizes 28 O'Neil Cannon Attorneys
- 19 O'Neil Cannon Lawyers Selected as 2024 Best Lawyers; Another 4 Named Best Lawyers: Ones to Watch
- O'Neil Cannon Serves as Legal Advisor to Diamond Vogel, Inc. in Acquisition of Subsidiary of The Sherwin-Williams Company
- *Super Lawyers* Recognizes 25 O'Neil Cannon Attorneys
- 19 OCHDL Lawyers Selected as 2023 Best Lawyers®; Another 4 Named Best Lawyers: Ones to Watch
- Employment LawScene Alert: Seventh Circuit Holds That Light Duty Policy Did Not Violate the PDA
- Joseph Gumina, Grant Killoran, and Erica Reib Published in the Wisconsin Lawyer
- Attorney Joseph Gumina Recently Quoted in The Daily Reporter
- Attorney Joseph Gumina Recently Quoted in the Milwaukee Business Journal
- Employment LawScene Alert: U.S. Supreme Court Issues Stay of OSHA's Vaccination-or-Test Rule
- Employment LawScene Alert: U.S. Supreme Court Halts OSHA's Vaccination-or-Test Emergency Temporary Standard
- Employment LawScene Alert: U.S. Supreme Court to Hold Special Session on January 7, 2022 to Review Federal Vaccine Mandates
- Employment LawScene Alert: Sixth Circuit Lifts Stay of OSHA's Vaccination Mandate-OSHA Follows by Announcing Enforcement Policy
- Employment LawScene Alert: Sixth Circuit Selected to Hear Challenges to OSHA's COVID-19 Vaccination Mandate
- Employment LawScene Alert: Fifth Circuit Issues Strong Rebuke of OSHA's Authority to Mandate Vaccinations in the Workplace-OSHA Suspends Efforts
- 19 OCHDL Lawyers Selected as 2022 Best Lawyers®; Another 5 Named Best Lawyers: Ones to Watch
- Employment LawScene Alert: Biden Administration's Department of Labor Will Upend Many Employer-Friendly Regulations
- Attorney Gumina's Article on Employer Covid-19 Vaccination Policies was Featured by ABC of Wisconsin
- Employment LawScene Alert: Biden Administration Will Promote a Significant Shift in Recent Federal Labor Law
- Employment LawScene Alert: Workplace Safety is a Top Priority for the Biden

Administration

- Attorney Joseph Gumina Featured in Merit Shop Contractor
- 20 OCHDL Lawyers Selected as 2021 Best Lawyers®; Another 5 Named Best Lawyers: Ones to Watch
- Attorney Joseph Gumina Recently Featured in Super Lawyers
- Employment LawScene Alert: DOL Updates Guidance on FFCRA Compliance
- Employment LawScene Alert: DOL Announces that the Paid Leave Provisions of the Families First Coronavirus Response Act are Effective April 1, 2020
- Employment LawScene Alert: President Signs Families First Coronavirus Response Act Expanding Employees' FMLA Rights and Mandating Paid Sick Leave
- Employment LawScene Alert: Economic Relief is Coming for Employees Impacted by the Coronavirus-Emergency FMLA Expansion Act-Emergency Paid Sick Leave Act
- Attorney Joseph Gumina Featured in Merit Shop Contractor
- Employment LawScene Alert: New Year - New Labor and Employment Law Developments Every Employer Should Know
- Employment LawScene Alert: Breaking News: DOL Sets Overtime Salary Exemption Threshold at \$35,568
- Eighteen OCHDL Attorneys Named 2020 Best Lawyers in America®
- 20 OCHDL Attorneys Named 2019 Best Lawyers in America
- Employment LawScene Alert: Wage and Hour Liability—the Hidden Danger in Asset Acquisitions
- Employment LawScene Alert: NLRB's General Counsel Issues Guidance on Handbook Rules Post-Boeing
- Best Lawyers® Honors 18 Attorneys in 2018
- Federal Court Holds Wisconsin's Right-to-Work 30-day Revocation Provision Unconstitutional
- Employment LawScene Alert: Wisconsin Court of Appeals Finds Nonsolicitation of Employees Provision Unenforceable Under Restrictive Covenant Statute
- Upcoming Events—Lunch and Learn: New DOL Overtime Rules
- U.S. DOL Announces That It Will Publish Final Rule to Update Overtime Regulations
- Attorney Gumina Authors IICLE Chapter on Guidelines for Drafting Employment Agreements
- Employment LawScene Alert: Defend Trade Secrets Act of 2016: Employers Must Include New Whistleblower Immunity Notice in Confidentiality or Non-Disclosure Agreements
- Employment LawScene Alert: Dane County Judge Finds Right-to-Work Law Unconstitutional
- Employment LawScene Alert: NLRB Holds That Policy Prohibiting Recording Devices in the Workplace Violates Employees' Section 7 Rights
- Attorneys Gumina and Reib Publish Labor and Employment Law Article Series in InsideCounsel Magazine
- Attorney Gumina Presents to the HFTP Greater Milwaukee Chapter
- Employment LawScene Alert: NLRB Issues New Rules for Union Elections
- Seventh Circuit Reverses Course on Employer's ADA Reasonable Accommodation Obligations
- Record Retention Policy: A Start to Being Litigation-Ready
- EEOC Seeks Determination from Seventh Circuit that its Pre-Suit Conciliation Efforts

Cannot be Reviewed

- OSHA Now Permits Union Organizer to Accompany OSHA Compliance Officer during Walk Around Inspection in Non-Union Facility
- Does Your “At-Will” Employment Statement Violate the National Labor Relations Act?
- NLRB Asserts that Telling Employees to Maintain Confidentiality During Internal Investigations Violates Section 7 Rights
- An Employer’s Guide to Wisconsin’s Concealed Carry Law
- O’Neil, Cannon, Hollman, DeJong and Laing Elect Joseph Gumina as Shareholder
- Attorney Gumina Serves as General Editor for Employers’ Management Handbook
- Think You Know How Far You Have to Go for Your Employees? Think Again.
- Workplace Diversity: Defining Success Goes Beyond Numbers
- “Managing and Embracing Workplace Diversity” Webinar – June 30, 2009
- Attorney Joseph E. Gumina Joins OCHD

Education

- William Mitchell College of Law
- Marquette University (B.S., Business Administration)