



## John T. McCann

*Partner*



P: (315) 565-4500 ext. 4540

F: (315) 565-4600

[jmccann@hancocklaw.com](mailto:jmccann@hancocklaw.com)

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John McCann is a partner in the Labor & Employment Practice. He has served as a member of the Firm's Executive Committee and as the Chair of the Labor & Employment Department.

Mr. McCann is a Delegate to the New York State Bar Association House of Delegates, a Fellow of the American Bar Foundation and of the New York Bar Foundation, and President Elect of the Onondaga County Bar Association. He has served on the Local Rules Committee of the United States District Court, Northern District of New York.

### PRACTICE AREAS

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- Labor & Employment
- Government Relations
- Education
- Municipal
- Alternative Dispute Resolution

### REPRESENTATIVE MATTERS

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#### Employment Matters and Litigation

- Obtained a jury verdict in favor of an employer and an alleged joint employer on sexual harassment and retaliation claims brought against the company president (U.S. District Court, Northern District of New York).
- Obtained a jury verdict in favor of an employer on sexual harassment and retaliation claims against a school principal (U.S. District Court, Northern District of New York).
- Obtained a jury verdict in favor of an employer on retaliation claims brought by a discharged director of human resources (U.S. District Court, Northern District of New York).
- Obtained a jury verdict in favor of an employer on national origin discrimination, harassment and retaliation claims (U.S. District Court, Southern District of New York).
- Obtained a federal court decision after bench trial in favor of an employer and a union, dismissing causes of action for breach of collective bargaining agreement, breach of union duty of fair representation and age discrimination (U.S. District Court, Northern District of New York).
- Obtained a summary judgment in favor of a college in an alleged sex discrimination and retaliation case brought by a faculty member following denial of promotion due to insufficient scholarship (U.S. District Court, Northern District of New York).
- Successfully defended various employers in more than 100 employment discrimination and retaliation claims filed in federal and state courts, and before administrative agencies.
- Successfully defended an OFCCP audit which had made a \$2 million assessment against an employer with federal contracts for alleged disparities in hiring of female employees, following a statistical analysis of hiring practices.

- Successfully defended a Section 10(j) injunction petition brought by the NLRB to the point of withdrawal with prejudice and the NLRB payment of the employer's attorney fees.
- Obtained a dismissal of NLRB charges based on an alleged unlawful lockout of unfair labor practice strikers, in a case of first impression (NLRB Advice Memorandum, 1989 NLRB GCM LEXIS 33).
- Successfully defended an OSHA complaint for various alleged repetitive motion injuries under the Section 5(a) general duty clause to the point of withdrawal with prejudice by OSHA.

### **Labor Relations and Collective Bargaining**

- Successfully represented various employers in numerous labor arbitrations over contract interpretations and disciplinary actions, including: plant closing and successor employer claims; wage concession payback agreements; discharges of health care workers for misconduct, including patient abuse; discharges of employees for sexual harassment of coworkers; and discharges of employees for falsification of records and safety violations.
- Conducted negotiations on behalf of various employers with the following labor organizations: American Federation of Musicians (AFM); Civil Service Employees Association (CSEA); Communications Workers of America (CWA); International Brotherhood of Teamsters (IBT); International Typographical Union (ITU); International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE); International Union of Operating Engineers (IUOE); International Union of Plant Protection Employees (IUPPE); National Education Association (NEA); New York State United Teachers (NYSUT); Paper, Allied Industrial, Chemical & Energy Workers International Union (PACE); Service Employees International Union (SEIU); United Automobile, Aerospace and Agricultural Implement Workers (UAW); United Food & Commercial Workers International (UFCW); United Paperworkers International Union (UPIU); and United Steelworkers of America (USWA).
- Represented various employers in connection with numerous collective bargaining and litigation matters associated with strikes, lockouts and picketing.
- Negotiated wholesale revisions to collective bargaining agreements, including outsourcing rights and reduction of 34 job classifications into two classifications, with corresponding changes to seniority, transfer and layoff language.
- Represented various employers in numerous union campaigns, elections and decertification proceedings before the NLRB, including proceedings involving UAW, IBT, IUPPE, UPIU, SEIU and IUOE.

## **REPORTED DECISIONS**

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### **United States Court of Appeals**

- *Smith et. al. v. New Venture Gear, Inc. and DaimlerChrysler Corp.*, 320 Fed. Appx. 33, 2009 U.S. App. LEXIS 5991; 319 Fed. Appx. 52, 2009 U.S. App. LEXIS 4950 (U.S. Court of Appeals, Second Circuit 2009) (Affirming summary judgment granted in favor of employer in multiple plaintiff alleged race and sex discrimination/harassment/retaliation cases.)
- *Carter v. New Venture Gear, Inc. and DaimlerChrysler Corp.*, 310 Fed. Appx. 454, 2009 U.S. App. LEXIS 3237 (U.S. Court of Appeals, Second Circuit 2009) (Affirming summary judgment granted in favor of employer in alleged race and sex discrimination/harassment case.)
- *Dunbar v. MSK Corp.-Main Event Food Service*, 84 Fed. Appx. 115 (U.S. Court of Appeals, Second Circuit 2003) (Affirming award against NLRB of attorneys' fees incurred by employer in Section 10(j) injunction proceeding, under Equal Access to Justice Act.)
- *U.A.W. v. R.E. Dietz Co. and Federal Mogul Corp.*, 2 F.3d 403 (U.S. Court of Appeals, Second Circuit 1993) (Affirming summary judgment granted in favor of employer on Section 301 claims for repayment of wage concessions on jurisdictional and preemption grounds.)
- *U.A.W. Local 33 v. R.E. Dietz Co.*, 996 F.2d 592 (U.S. Court of Appeals, Second Circuit 1993) (Affirming summary judgment granted in favor of employer on Section 301 and ERISA class action claims for post-strike vacation benefits on jurisdictional and statute of limitations grounds.)

## United States District Court

- *McGuire-Welch v. The House of the Good Shephard*, 2016 WL 6581286 (U.S. District Court, Northern District of New York 2016) (Summary judgment granted in alleged age discrimination and retaliation case).
- *Walters v. MedBest Medical Management, Inc.*, 2015 WL 860759 (U.S. District Court, Northern District of New York 2015) (Summary judgment granted in part in alleged sexual harassment and retaliation case).
- *Dottolo v. Byrne Dairy, Inc.*, 2010 WL 2560551 (U.S. District Court, Northern District of New York) (Summary judgment granted in alleged sex discrimination/harassment/retaliation case).
- *Bishop v. New Process Gear, Inc.*, 2009 U.S. Dist. LEXIS 107545 (U.S. District Court, Northern District of New York 2009) (Summary judgment granted in alleged Family and Medical Leave Act (FMLA) retaliation case.)
- *Ferguson v. New Venture Gear, Inc. and DaimlerChrysler Corp.*, 2009 U.S. Dist. LEXIS 7811 (U.S. District Court, Northern District of New York 2008) (Summary judgment granted in alleged race discrimination and retaliation case.)
- *Smith v. New Venture Gear, Inc. and DaimlerChrysler Corp.*, 2008 U.S. Dist. LEXIS 4468, 2007 U.S. Dist. LEXIS 72945 (U.S. District Court, Northern District of New York 2008) (Summary judgment granted in favor of employer in multiple plaintiff alleged race and sex discrimination/harassment/retaliation cases.)
- *Carter v. New Venture Gear, Inc. and DaimlerChrysler Corp.*, 2007 U.S. Dist. LEXIS 71695 (U.S. District Court, Northern District of New York 2007) (Summary judgment granted in favor of employer in alleged race and sex discrimination/harassment case.)
- *Jones v. DaimlerChrysler Corp.*, 2006 U.S. Dist. LEXIS 44036 (U.S. District Court, Northern District of New York 2006) (Motion to dismiss granted in alleged race and gender discrimination case.)
- *Morris v. Loretto*, 02-CV-1017 (U.S. District Court, Northern District of New York 2004) (Summary judgment granted in alleged race discrimination/retaliation and defamation case.)
- *Bright v. Le Moyne College*, 306 F. Supp. 2d 244 (U.S. District Court, Northern District of New York 2004) (Summary judgment granted in alleged race and sex discrimination/retaliation/constructive discharge case.)
- *Baum v. Village of Chittenango*, 218 F.R.D. 36 (U.S. District Court, Northern District of New York 2003) (Employer's motion granted to compel production of communications between plaintiff's attorney and expert witness (psychologist).)
- *McKinney v. New Process Gear*, 2000 U.S. Dist. LEXIS 9787 (U.S. District Court, Northern District of New York 2000) (Summary judgment granted in alleged disability discrimination case.)
- *Schwenn v. Anheuser-Busch, Inc.*, 1998 U.S. Dist. LEXIS 5027 (U.S. District Court, Northern District of New York 1998) (Summary judgment granted in alleged sexual harassment case.)
- *Harten v. New Venture Gear, Inc. and U.A.W. Local 624*, 1997 U.S. Dist. LEXIS 11774 (U.S. District Court, Northern District of New York 1997) (Summary judgment granted in alleged breach of collective bargaining agreement/duty of fair representation case, on grounds of preemption.)
- *Boyer v. Anheuser-Busch, Inc., Anheuser-Busch Beverage Group, Inc., Saratoga Mineral Water and Maness*, 1989 U.S. Dist. LEXIS 15510 (U.S. District Court, Northern District of New York 1989) (Summary judgment granted in alleged defamation and breach of contract case.)

## RECOGNITIONS AND HONORS

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- Rated, AV Preeminent, Martindale-Hubbell
- Selected, The Best Lawyers in America
- Selected, New York - Upstate, Super Lawyers (2011-2017)
- Fellow, American Bar Foundation
- Fellow, New York Bar Foundation

## PROFESSIONAL AND COMMUNITY ACTIVITIES

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- Delegate, New York State Bar Association, House of Delegates
- Member, Local Rules Committee, U.S. District Court for the Northern District of New York
- Member, Northern District of New York Federal Court Bar Association
- Member, American Bar Association, Labor and Employment Law Section
- Member, American Bar Association, Litigation and Law Practice Management Sections
- Member, New York State Bar Association, Labor and Employment Law Section
- Member, Business Council of New York State, Labor & Human Resources Committee
- Member, Labor and Employment Research Association, Central New York Chapter
- Member, Onondaga County Bar Association, Board of Directors
- Vice President and Past-Treasurer, Onondaga County Bar Association
- Member, Onondaga Historical Association, Board of Directors

## SPEAKING ENGAGEMENTS

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- Labor & Employment Breakfast Club, New York State Employee Scheduling Regulations (February 2018)
- Hancock Estabrook's 13th Annual Labor & Employment Law Symposium (September 2017)
- Tompkins Chamber of Commerce, "Paid Family Leave Presentation" (September 2017)
- Labor & Employment Breakfast Club, "New York State Paid Family Leave Law" (June 2017)
- NYSBA Annual Meeting, "Addressing Law Firm Human Resources Issues: Diversity and Accommodation: ABA Amendment to the Model Rules" (January 2017)
- Society for Human Resource Management of Tompkins County, "FLSA Updates" (September 2016)
- Society for Human Resource Management of Tompkins County, The Many Hats of HR, "Developing Legal Protections for Employee Activities in and out of the Workplace" (May 2016)
- Labor & Employment Breakfast Club, "NLRB New Year's Resolution: A Union in Every Workplace" (January 2015)
- American Arbitration Association, "Arbitration Case Preparation and Presentation"
- Central New York Coalition of Local Governments, "Right to Know, Hazard Communication"
- College and University Personnel Association, "Recent Developments in Employment Law"
- Industrial Relations Research Association of Central New York, "Civil Rights Act of 1991"
- Institute of Management Accountants, "Labor Law Compliance"
- National Business Institute, "Avoiding Lawsuits for Employment Discrimination"
- National Business Institute, "Navigating Collective Bargaining Agreement Negotiations"
- NLRB / Cornell University / NYS Bar, "The Appropriateness of Injunctive Relief Under Section 10(j)"
- North Country Human Resources Association, "Wage Theft Prevention Act"
- NYS Bar Association, "Labor and Employment Law for the General Practitioner and Corporate Counselor"
- NYS Bar Association, "The Family and Medical Leave Act: Changes and Changes Ahead"
- NYS Society for Human Resource Management (SHRM) Annual Conference, "Surviving the Employee Free Choice Act"
- NYS School Boards Association, "Fair Labor Standards Act"
- Sterling Education Services, "The Lurking Threat of Employee Retaliation Claims"
- Sterling Education Services, "FMLA Compliance"

## PRESS AND PUBLICATIONS

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- Chapter Editor, Chapter 20, "The Lockout," in *The Developing Labor Law*, ABA Section of Labor and Employment Law, Bureau of National Affairs; Contributing Editor, Chapter 20 (6th ed.; 5th ed.; annual Supplements, 2006-2016).

- "[Employer Social-Media Policies Are Under Scrutiny](#)", *CNY Business Journal*, December 2012
- "Factory Workers Fail to Show Job Bias, Breach by Union, Second Circuit Finds," *Employment Discrimination Report*, Bureau of National Affairs, April 8, 2009. Article addresses a favorable decision obtained by John T. McCann and Lindsey H. Hazelton from the U.S. Court of Appeals for the Second Circuit.
- "Second Circuit Awards EAJA Fees After NLRB Failed to Investigate Claims, Prolonged Suit," *Daily Labor Report* (Bureau of National Affairs) January 15, 2004. Article addresses a favorable decision obtained by John T. McCann from the U.S. Court of Appeals for the Second Circuit.
- "Employer Lawfully Fired Pro-Union Workers Who Lied on Time Sheets, NLRB Rules 2-1," *Daily Labor Report* (Bureau of National Affairs) August 16, 2004. Article addresses a favorable decision obtained by John T. McCann from the National Labor Relations Board.
- "Attorney Is Ordered to Disclose Letters Written to Expert Witness," *New York Law Journal*, October 17, 2003. Article addresses a favorable decision obtained by John T. McCann from the U.S. District Court for the Northern District of New York.
- "Second Circuit Dismisses ERISA Suit to Recover Accrued Vacation Benefits," *Daily Labor Report*, Bureau of National Affairs, July 12, 1993. Article addresses a favorable decision obtained by John T. McCann from the U.S. Court of Appeals for the Second Circuit.

## EDUCATION

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- Cornell Law School, J.D., 1982
- Cornell University, B.S., Industrial Labor Relations, 1976

## ADMISSIONS

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- New York
- United States Court of Appeals (Fifth Circuit)
- United States Court of Appeals (Second Circuit)
- United States District Court (NDNY)
- United States District Court (SDNY)
- United States District Court (WDNY)