



Mark W. Robertson

Partner

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Mark W. Robertson is a partner in the labor/employment and aviation groups, with a specific focus on litigation and arbitration involving the Railway Labor Act. *Legal 500* has repeatedly recognized Mark for both his labor and employment and aviation work, *Benchmark Litigation* has repeatedly recognized him as a Labor & Employment Star, BTI named him a 2022 Client Service All-Star, and *Law360* recognized Mark as one of the top transportation attorneys in the nation, naming him a *Transportation MVP* in 2017 and 2021. Representative current and past airline clients include Alaska Airlines, American Airlines, Atlas Air, Envoy Air, Horizon Air, Piedmont Airlines, PSA Airlines, Southwest Airlines, Spirit Airlines, United Airlines, and US Airways. In addition to representing airlines in labor/employment matters, Mark also regularly represents airlines in consumer class actions, general commercial litigation matters, and in collective bargaining negotiations.

In addition to Mark's extensive experience in the airline industry, he has represented employers in sectors such as entertainment, private equity, financial services, professional services, education, gaming, construction, technology, and manufacturing. Mark serves as the *pro bono* partner for O'Melveny's New York Office and is a senior editor of *The Railway Labor Act*.

Admissions

Bar Admissions

New York

California

District of Columbia

Texas

Court Admissions

US District Court, Central, Northern, and Southern Districts of California, Eastern District of Michigan, Eastern District of Wisconsin, Eastern, Southern, and Western Districts of New York

US Court of Appeals, District of Columbia, First, Second, Third, Fifth, Seventh, Ninth, Tenth and Eleventh Circuits

Education

Pepperdine University, J.D.: *summa cum laude*; *Pepperdine Law Review*

Pepperdine University, M.B.A.

University of Louisiana at Monroe, B.B.A.: *summa cum laude*

Experience

- Prevailed on summary judgment motion in nationwide class action brought by pilots in the military against an airline alleging the airline violated USERRA by not paying them while on short-term military leave and by not crediting short-term military leave when calculating their awards under a profit sharing plan. *Scanlan v. American Airlines Group Inc.*, 2022 WL 16636935 (E.D. Pa. November 2, 2022).
- Obtained summary judgement on behalf of an airline in an action brought by a flight attendant alleging a hostile work environment and retaliation and discrimination based on religion and national origin. *Shah v. American Airlines, Inc.*, 2022 WL 3098087 (D.N.J. August 4, 2022).
- Prevailed on summary judgment motion in nationwide class action brought by pilots who took military leave during their employment and alleged their airline employer violated USERRA by not allowing them to accrue sick leave and vacation while on military leave. *Synoracki v. Alaska Airlines, Inc.*, 2022 WL 1746777 (W.D. Wash. May 31, 2022).
- Prevailed on a motion to dismiss in an action brought against an airline by the union representing its pilots who claimed the airline violated the Railway Labor Act's status quo provisions by unilaterally making changes to its pilot training program. *Allied Pilots Association v. American Airlines, Inc.*, 2022 WL 1608636 (N.D. Tex. May 20, 2022).
- Prevailed on motion to dismiss in collective action brought by 600 flight attendants against an airline alleging that a voluntary early out program offered by the airline in response to Covid violated the Age Discrimination in Employment Act. *Kincheloe v. American Airlines, Inc.*, No. 21-CV-00515-BLF, 2022 WL 1409235 (N.D. Cal. May 4, 2022).
- Prevailed on a motion to dismiss in litigation challenging an airline's Covid-19 vaccine mandate on the grounds that it presented a minor dispute preempted by the Railway Labor Act. See *Stephens v. Am. Airlines, Inc.*, No. 17, 21-cv-06934, 2022 WL 1115048 (N.D. Ill. Mar. 31, 2022).
- Prevailed on a motion to dismiss in a proposed class action brought against an airline under the Illinois' Biometric Information Privacy Act on the grounds that the claims were preempted by the Airline Deregulation Act. See *Kislov v. Am. Airlines, Inc.*, No. 17 C 9080, 2022 WL 846840 (N.D. Ill. Mar. 22, 2022).
- Prevailed on motion to dismiss based on Railway Labor Act preemption on behalf of an airline in a proposed class action brought by a retired flight attendant alleging the airline impermissibly changed her travel privileges. See *Wynn v. American Airlines, Inc.*, 2020 WL 1934994 (E.D. Missouri, April 22, 2020).
- Obtained summary judgment on all claims in purported class action filed by a pilot against an airline alleging the airline violated USERRA in the manner it provided sick time, vacation time, and operations-based bonuses to pilots who took military leaves of absence from American. *Hoefert v. American Airlines*, No. 4-18-cv-00466-P, (2020 WL 109653) (N.D. Tex. Jan 9, 2020).
- Represented an airline in litigation against the union representing its mechanics to stop a work slowdown causing flight delays and cancellations and prevailed in obtaining a temporary restraining order, a modified temporary restraining order, and a permanent injunction following a trial on the merits. See *Am. Airlines, Inc. v. Transp. Workers Union of Am., AFL-CIO*, No. 4:19-CV-414-A, 2019 WL 3774501 (N.D. Tex. Aug. 12, 2019).
- Prevailed on summary judgment motion in USERRA litigation brought against airline by a pilot. See *Patterson v. American Airlines, Inc.*, No. 0:17-cv-60533-JEM (S.D. Fl. March 29, 2019).

- Prevailed on motion to dismiss in action brought against airline by three pilots seeking to vacate an interest arbitration award that established certain contractual rights. See *Krakowski v. Am. Airlines, Inc. (In re AMR Corp.)*, 2019 WL 112336 (Bankr. S.D.N.Y. March 8, 2019) *aff'd*, 834 Fed. App'x 660 (2d Cir. 2021).
- Prevailed on a motion to dismiss based on Railway Labor Act preemption and failure to state a claim in litigation for wrongful termination brought against an airline by a former union chairman. See *Bryan v. Allied Pilots Association, et al.*, 2018 WL 6697691 (D. Mass. December 19, 2018) *aff'd*, 988 F.3d 68 (1st Cir. 2021).
- Obtained summary judgment in a class action brought against American Airlines by a group of former TWA pilots asserting a collusion claim related to an arbitration involving the airline's pilot seniority list. See *Krakowski v. Am. Airlines, Inc. (In re AMR Corp.)*, 2018 Bankr. LEXIS 1726 (Bankr. S.D.N.Y. June 12, 2018) *aff'd*, 834 Fed. App'x 660 (2d Cir. 2021).
- Represented airline in putative class action brought by mechanic who alleged the airline committed fraud and impermissibly changed his wage rates and prevailed on motion to dismiss based on *Garmon* preemption. See *Ballard v. Am. Airlines, Inc.*, 2017 U.S. Dist. LEXIS 206948 (N.D. Ill. December 18, 2017).
- Prevailed on a motion to dismiss on behalf of several airlines in litigation brought by a passenger asserting claims under Title VI, Federal Aviation law, Section 1981, and New York state law who claimed the airlines refused to board him based on his race/ethnicity. See *Shin v. Am. Airlines Grp. Inc. et al.*, 2017 WL 3316129 (E.D. N.Y. August 3, 2017), *aff'd* 726 F. App'x 89 (2d Cir. 2018).
- Represented airline in putative class action regarding airline's practices regarding fees and expiration of tickets and prevailed on motion to dismiss based on Airline Deregulation Act preemption. See *Robinson v. American Airlines, Inc.*, Nos. 17-6166, 17-6167, 2018 U.S. App. LEXIS 21427, 2018 WL 3689657 (10th Cir. Aug. 2, 2018).
- Represented airline in putative class action brought by group of pilots asserting collusion claim related to the airline's pilot seniority list and prevailed on motion to dismiss. See *Krakowski v. Am. Airlines, Inc. (In re AMR Corp.)*, 567 B.R. 247 (Bankr. S.D.N.Y. April 14, 2017)
- Prevailed on a motion to dismiss based on Montreal Convention on behalf of multiple airlines in litigation brought by four passengers who claimed they were removed from a flight because they are Muslim, and who asserted claims under Section 1981, Title VI, Federal Aviation law and New York State Human Rights Law. See *Alam v. Am. Airlines Grp. Inc. et al.*, 2017 U.S. Dist. LEXIS 38950 (E.D.N.Y. March 17, 2017).
- Prevailed on a motion to dismiss based on Railway Labor Act preemption on behalf of an airline in litigation brought by a retired flight attendant who claimed the airline impermissibly changed his travel privileges following a merger. See *Glassman v. Am. Airlines Grp., Inc.*, 2017 WL 836237 (S.D. Cal. Jan. 9, 2017).
- Prevailed on motion to dismiss based on workers' compensation exclusivity in putative class action against airline and its senior executives. *Smith v. Am. Airlines, Inc.*, No. 16-156, 2016 U.S. Dist. LEXIS 107402 (E.D. Pa. Aug. 12, 2016).

- Represented American Idol's production companies, broadcasting companies, and certain of its executive producers and sponsors against race discrimination and other claims brought by 10 former contestants, and prevailed in motion to dismiss. See *Andrews et al. v. FreemantleMedia N.A., Inc. et al.*, No. 13-5174, 2014 U.S. Dist. LEXIS 166242 (S.D.N.Y. Nov. 20, 2014), aff'd, 2015 WL 4998064 (2nd Cir. Aug. 24, 2015).
- Represented an airline in a putative class action brought on behalf of all members of its frequent flyer program alleging that the airline breached the terms of its frequent flyer guide and obtained summary judgment. *Kwok v. US Airways Group, Inc. et al.*, Case No. 1:13-cv-02068-HDL (N.D. Ill.).
- Defended a disability plan against purported ERISA claims, obtaining dismissal on the grounds that the lawsuit was precluded under the Railway Labor Act. See *Oakey v. US Airways Pilots Disability Income Plan*, 839 F. Supp. 2d 225 (D.D.C. 2012) aff'd, 723 F.3d 227 (D.C. Cir. 2013).
- Represented a private equity firm in an action brought by a former executive asserting violation of New York labor law, breach of fiduciary duty, unjust enrichment, and breach of contract. *Richardson v. ICV Capital Partners, LLC, et al.* (JAMS No. 1425007789).
- Defended an airline in a purported class action alleging violations of the Age Discrimination in Employment Act. *Shrum et al. v. US Airways, Inc. et al.*, Case No. 2:07-CV-044370-BMS (E.D. Pa.).
- Represented a global executive search firm in conducting an investigation regarding potential theft of trade secrets by several former employees and obtained a temporary restraining order against the former employees and their new business, and ultimately a permanent injunction. *Korn/Ferry International v. Becky Christian et al.*, Case No. 448606 (Cal. San Mateo Superior Court).
- Defended an airline in a purported class action alleging race discrimination. NAACP, *Philadelphia Branch et al. v. US Airways Group, Inc. et al.*, Case No. 2:10-cv-00043-PBT (E.D. Pa.).
- Represented two cargo airlines in an interest arbitration to determine the scope provisions governing the company's unionized pilots. *In the Matter of an Interest Arbitration involving Atlas Air, Inc. and Polar Air Cargo, Inc. and International Brotherhood of Teamsters, Airline Division*.
- Represented an airline in obtaining a preliminary injunction against its pilots' union to stop a work slowdown, which was later converted to a permanent injunction by agreement. See *United Air Lines, Inc. v. Air Line Pilots Ass'n Int'l*, 185 L.R.R.M. (BNA) 2562 (N.D. Ill. Nov. 17, 2008), aff'd, 563 F.3d 257 (7th Cir. 2009).
- Represented a major mortgage lender in a nationwide collective action alleging violation of the Fair Labor Standards Act. *Sturge v. Federal National Mortgage Association*, Case No. 2:05-cv-04216-RSWL-MAN (C.D. Cal.).
- Represented an airline in an action brought by a union seeking to vacate an arbitration decision, and won 12(b)(6) motion to dismiss. *US Airline Pilots Ass'n v. US Airways, Inc.*, 25 F. Supp. 3d 758, 2014 U.S. Dist. LEXIS 79876, 199 L.R.R.M. (BNA) 3673 (W.D. Pa., June 12, 2014), aff'd, 2015 U.S. App. LEXIS 3648 (3d Cir. March 9, 2015).
- Represented an airline against allegations of Railway Labor Act violations (including a bad-faith bargaining claim) brought by union and won motion to dismiss. See *Air Line Pilots Ass'n Int'l v. Spirit Airlines, Inc.*, 186 L.R.R.M. (BNA) 2934 (E.D. Mich., June 18, 2009).
- Represented a wine/spirits company in a non-compete dispute with a former executive. *Winery Exchange, Inc. v. Hurst* (AAA No. 13 180 916 10).

- Represented an airline in an action brought by two passengers who alleged that the airline removed them from a flight based on their race/ethnicity. *Abdallah et al. v. US Airways Group, Inc. et al.*, Case No. 11-cv-00389-WJM-MF (D.N.J.).
- Coordinated the defense of 70 individual actions brought against a large municipality premised upon Section 1983 (free speech and due process) and employment discrimination and retaliation claims. *E.g., Crosby v. City of Los Angeles, et al.*, Case No. CV 02-06417 (C.D. Cal.).
- Represented a public school district in a high-profile multi-plaintiff lawsuit alleging peer-to-peer racial harassment. *Alabi et al. v. William S. Hart Union High School District, et al.*, Case No. CV 05-3726 (C.D. Cal.).
- Represented an airline in an interest arbitration to determine wage rates and other benefits for its pilots. *In the Matter of the Interest Arbitration Between Alaska Airlines, Inc. and the Air Line Pilots Ass'n, Int'l.*
- Represented an airline in obtaining a preliminary injunction against one of its unions to stop a work slowdown, which was later converted into a permanent injunction by agreement. *See US Airways, Inc. v. US Airline Pilots Ass'n*, 813 F. Supp. 2d 710 (W.D. N.C., Sept. 28, 2011).
- Retained to defend an airline in a breach of aircraft lease dispute after plaintiff obtained summary judgment. On appeal, not only obtained reversal of the summary judgment, but convinced the appellate court to enter summary judgment in favor of the airline and dismiss the case. *See Wells Fargo Bank Northwest, N.A. v US Airways, Inc.*, 100 A.D.3d 1, 950 N.Y.S.2d 50 (1st Dep't 2012), leave to appeal denied, 2012-1000, 2012 WL 5950414 (N.Y. Ct. App. Nov. 29, 2012).
- Represented an airline in a wrongful death action brought on behalf of a purported stow-away, and won motion to dismiss on the grounds of contributory negligence and trespass. *Tisdale et al. v. City of Charlotte, North Carolina, et al.*, Case No. 12-CVS-20529 (N.C. Superior Court).
- Represented an airline in an action brought by the pilots' union to confirm an arbitration decision, and won motion to dismiss on grounds that the court lacked subject-matter jurisdiction. *See U.S. Airline Pilots Association v. US Airways, Inc.*, 2013 WL 5466838, Case No. 2:13-cv-0627 (W.D. Pa.).

Professional Activities

Author

- "Fifth Circuit Issues Its Decision in D.R. Horton Holding That Mandatory Class Action Waivers In Arbitration Agreements Do Not Violate the NLRA," O'Melveny & Myers Client Alert, co-authored with Apalla Chopra, Adam Karr, and Ryan Rutledge (December 4, 2013)
- "Are Internship Programs Worth the Risk?" *Corporate Counsel*, co-authored with Ryan Rutledge (November 25, 2013)
- "New York City Human Rights Claims are Still Tricky for Employers," *Employment Law360* and *New York Law360*, co-authored with Matthew Damm (June 4, 2013)
- "New York State Raises Minimum Wage," O'Melveny & Myers Client Alert, co-authored with Jeffrey Kohn and Matthew Damm (April 26, 2013)
- "New York City Council Enacts Law Prohibiting Unemployment Discrimination," O'Melveny & Myers Client Alert, co-authored with Jeffrey Kohn and Matthew Damm (April 5, 2013)
- "The Law of the Lawyer -- Considerations for Drafting Social Media Policies," *The Practical Lawyer*, co-authored with Ryan Rutledge and Lauren Elkerson (August 2011)

- "Defusing Workplace Time-Bombs -- Considerations for Drafting Social Media Policies," ALI-ABA, co-authored with Ryan Rutledge and Lauren Elkerson (June 2011)
- "Trendsetting: NYC's Human Rights Law," *New York Law360* and *Employment Law360*, co-authored with Sloane Giddon (March 17, 2011)
- "A Helpful Decision Regarding the CFAA," *Appellate Law360* and *Employment Law360* (January 26, 2011)
- "Dual Views of CFAA in NY," *Technology Law360* and *Employment Law360*, co-authored with Natasha Waglow (January 10, 2011)
- "The Computer Fraud and Abuse Act in the Employment Context and Its Interpretation by New York Courts," *New York State Bar Association Trade Secrets Law Committee, Trade Secrets and Departing Employees*, co-authored with Natasha Waglow (December 14, 2010)
- "Avoiding Liability For Unpaid Interns," *Employment Law360*, co-authored with Charles Nerko (June 2010)
- "New York Court of Appeals Holds Faragher-Ellerth Affirmative Defense Not Applicable to Harassment Claims Brought Under New York City Human Rights Law," O'Melveny & Myers Client Alert, co-authored with Jeffrey Kohn and Anthony DiLello (May 7, 2009)
- "Use of the Computer Fraud and Abuse Act in the Employment Context," *Executive View Media 2009 Labour & Employment Digital Guide*, co-authored with Ryan W. Rutledge (December 2009)
- "Enforceability of Non-Competition and Non-Solicitation Covenants in New York and California," *Executive View Media 2009 Labour & Employment Digital Guide*, co-authored with Sloane Giddon (December 2009)
- "New York Courts May Have Jurisdiction over Foreign Defendants that Trade on the New York Stock Exchange in Employment and other Disputes," O'Melveny & Myers Client Alert, co-authored with Jeffrey Kohn and Sloane Giddon (November 5, 2009)
- "Protecting Trade Secrets When Employees Depart," *Employment Law360*, co-authored with Eric Amdursky (September 18, 2009)
- "State By State Employee Monitoring Laws," *Employment Law360*, co-authored with Anthony DiLello (April 20, 2009)
- "Practical Tips for Avoiding SOX Whistle-Blower Liability," American Bar Association, Section of Litigation, Employment & Labor Relations Law Committee (co-authored with Ryan Rutledge)
- "Leveling the Playing Field When A Civil Litigant Asserts The Fifth In California State Court," *Business Law News*, The State Bar of California, Issue 2, co-authored with Ryan Rutledge (2008)
- "The Trouble with Establishing 'Protected Activity' in a Prima Facie SOX Whistle-blowing Claim," *Employment & Labor Relations Law*, co-authored with Ryan Rutledge (Spring 2008)
- "Office Watch: The Law Governing Workplace Surveillance," *Los Angeles Lawyer Magazine*, co-authored with Mark A. Kanaga (April 2008)
- "Computer Use Policies Can Impact Litigation Outcome," *Employment Law360*, co-authored with Mark A. Kanaga (March 13, 2008)
- "A Key Decision For SOX Practitioners," *Employment Law360* and *Securities Law360*, co-authored with Ryan W. Rutledge (January 29, 2008)

- “Tips for Avoiding Trade Secret Claims When Hiring,” *Employment Law360* and *IP Law360* (December 3, 2007)
- “Differing Theories Emerge on Counsel Use of Privileged Information in Suits Against Employers,” American Bar Association Section of Litigation, *Litigation Update* (May 2007)

Contributing Author

- “Electronic Spoliation Sanctions: Delete at Your Own Risk,” Paper Prepared by the Non-Competition, Trade Secrets, Proprietary Information, and Duty of Loyalty Subcommittee of the ERR Committee of the ABA Labor and Employment Law Section
- *Employment Discrimination Law*, BNA Books (2000 Supplement)

Member

- Advisory Board, NYU Center for Labor and Employment Law
- American Employment Law Council
- *Law 360*, Transportation Editorial Advisory Board (2022)

Honors & Awards

- Recognized as a BTI Client Service All-Star (2022)
- Recognized as a Labor & Employment Star by *Benchmark Litigation* (2020-2023)
- *Law360*, Transportation MVP (2021, 2017)
- *The Legal 500 US*, Aviation and Air Travel - Litigation (2018-2019, 2022); Labor and Employment Disputes: Defense (2016-2021); Labor-Management Relations (2013-2022); Labor and Employment Litigation (2012-2015)