



## Adam P. KohSweeney

Partner

San Francisco

D: +1-415-984-8912

akohsweeney@omm.com

Adam works on matters involving an array of labor and employment-related issues under federal and state law, including litigation and arbitration under the Fair Labor Standards Act, state wage-and-hour laws, the Fair Credit Reporting Act, the Railway Labor Act, and the National Labor Relations Act, as well as contract and tort claims. He represents and counsels a wide variety of employers, particularly companies in the financial services, hospitality, airline, and construction industries.

Adam also regularly advises employers regarding how to preserve, collect, review, and produce electronically stored information (“ESI”). He is the co-author of a practice guide which discusses all aspects of the doctrine of spoliation in the context of electronically stored information.

Adam is also active in pro bono matters and often advises small and not-for-profit employers regarding compensation and employment policies and practices. He has frequently represented the Mexican American Legal Defense and Educational Fund (“MALDEF”) in matters involving immigration and voting rights.

### Experience

- Represented a major hotel in a case involving allegations that the company's service charge practices in the banquet department violate California's tip statute. Obtained a full defense verdict after a bench trial and successfully defended the verdict on appeal.

### Admissions

#### *Bar Admissions*

California

New York

#### *Court Admissions*

US District Court, Central, Northern, and Southern Districts of California, Western District of Missouri

US Court of Appeals, Fifth, Ninth, and Eleventh Circuits

US Supreme Court

### Education

Rutgers University, J.D.,  
1999: Editor-in-Chief, *Rutgers Law Review*

Rutgers University, B.A., English,  
1995: with honors; Athenaeum  
Honors Society

- Represents a mainline domestic air carrier in two separate class actions brought by pilots and flight attendants (respectively) who were California residents alleging violations of California labor law. Successfully moved for summary judgment in both cases on the ground that California labor law did not apply to plaintiffs because they worked primarily outside of California.
- Represents a mainline domestic air carrier in a representative action alleging wage-and-hour violations on behalf of mechanics. Obtained summary judgment based on Railway Labor Act preemption principles.
- Represents another mainline domestic air carrier in a class action matter alleging meal period and rest break violations as well as off-the-clock work and unpaid overtime. Successfully moved to dismiss the meal and rest claims with prejudice based on Airline Deregulation Act preemption and successfully convinced plaintiffs' counsel to drop their reimbursement claims. Subsequently obtained summary judgment on the overtime claim and decertified the off-the-clock class.
- Represents a nationwide professional staffing company in several different matters, including putative wage-and-hour class actions and putative class actions under the Fair Credit Reporting Act. Successfully demurred in one case, and compelled arbitration on an individual basis in two others.
- Represents a technology company in a series of misclassification cases and arbitrations across the country. Successfully moved to compel arbitration and enforce a class action waiver in two separate matters. Regularly advises Arise on independent contractor misclassification issues and regarding the drafting of arbitration agreements and class action waivers.
- Represented a financial services company in a nationwide FLSA collective action, with pendent California and New York subclasses, relating to mandatory training for tax preparers. Prevailed on summary judgment after taking over the case from prior counsel, resulting in the dismissal of all claims asserted by a class of over 45,000 individuals. The ruling was affirmed on appeal.
- Successfully defended a construction company's decision to terminate a driver who failed a Department of Transportation-mandated random drug test. The representation involved defending against the resulting grievance and successfully appealing part of the arbitrator's decision to federal court.
- Successfully represented a major domestic air carrier in an interest arbitration involving rest facilities for flight attendants on a new international route.
- Represented a regional newspaper publisher and successfully defeated a request for an injunction brought by the National Labor Relations Board under Section 10(j) of the National Labor Relations Act. The Board had requested an injunction to reinstate eight employees who were terminated, allegedly for union organizing activity.
- Worked successfully with a financial services industry organization to obtain a clarifying opinion letter from the US Department of Labor, Wage and Hour Division, regarding the exempt status of certain employees.
- Worked with multiple lobbying firms and brokerage houses to pursue amendments to California's wage deduction and employee indemnification statutes.
- Regularly counsels, advises, and trains employers regarding exempt classification, employee/independent contractor classification, payroll, wage statements, and proper compensation of both exempt and non-exempt workforces. This counseling takes the form of drafting policies, reviewing and drafting compensation plans, training managers, and the like.

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## Professional Activities

### Clerkships

- Honorable Howard H. Kestin, New Jersey Superior Court, Appellate Division

### Presenter

- “The Latest Developments in Equal Pay/Fair Wage Matters,” ACI’s 29th National Forum on Wage & Hour Claims and Class Actions (2017)
- “Employment Class Actions,” Alameda County Bar Association Labor & Employment Law Section (2016)
- Workplace and Employment Law Update, Employers Group (2008-2015)
- All Hands Meeting, Silicon Valley Association of General Counsel (2014)
- “Trends With Class and Pattern Cases in California,” Practising Law Institute (2013)
- “The Brinker Decision: New Guidance on California’s Meal Period Requirements TeleBriefing,” Law Seminars International (2012)
- Annual Wage & Hour Litigation Conference, Bridgeport (2010 and 2011)
- Nuts & Bolts of the FLSA, ExecSense (2010)
- 37th Annual Institute on Employment Law, Practising Law Institute (2008)

### Co-Author

- “Non-Exempt Employee Compensation: Traps for the Unwary,” *Bloomberg Labor & Employment Reports* (December 2011; co-authored with Apalla Chopra)
- “Strategic Issues Related to Employee Exemption Review,” *Bloomberg Labor & Employment Reports* (August 2011; co-authored with Apalla Chopra)
- “Courts Split Over Calculating Overtime Damages,” *The National Law Journal* (January 10, 2011; co-authored with Justin Walker)
- “Spoliation in the Electronic Age,” *BNA Books* (December 2010, co-authored with Roberta Vespremi and Eric Chan)
- “Hiring? Laying Off? What You Must Know Now,” *BusinessWeek* (October 2009; co-authored with Framroze Virjee)

## Honors & Awards

- Recognized by *Benchmark Litigation* as a Labor & Employment Star (2021-2022)
- Named to the *Daily Journal’s* list of Top Labor & Employment Lawyers (2020)
- Named to the *National Law Journal’s* list of Employment Law Trailblazers (2019)
- Recognized by *The Legal 500 US* for his work in aviation matters (2019-2020)
- Recognized by *The Legal 500 US* for his work in labor and employment disputes (2017-2021)
- Named a Northern California “Rising Star” (2011-2013) and a Southern California “Rising Star” (2006-2008) in an annual survey conducted by *Law & Politics Media Inc.*