



## JOSEPH E. GUMINA

# O'NEILCANNON

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Shareholder

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Joseph Gumina is a shareholder at O'Neil Cannon and the Past Chair of O'Neil Cannon's Labor & 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.

### PRACTICE GROUP

- Labor & Employment
- Litigation
- Business

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, 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

### 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 employers 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

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- 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

### Professional Associations & Affiliations

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

#### 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 & 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 & 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

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- Co-Author, “Independent Contractors—Avoiding Misclassification Under the FLSA,” *InsideCounsel Magazine*, 2015
- Speaker, *Legal Advice*, “Latest Developments in Labor & Employment Law,” HFTP Greater Milwaukee Chapter, March 2015
- Editor in 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* at [shrm.org-Workplace Law Library](http://shrm.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

### Community Involvement

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

### Education

- Marquette University (B.S.—Business Administration)
- William Mitchell College of Law (J.D.)