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LABOR & EMPLOYMENT

What's the point of all this?

Despite being a relatively old practice (the U.S. Department of Labor was created in 1884), labor and employment law continues to develop in significant ways. California has for years led the nation in the development of labor and employment law. Because

of that, California has some of the most experienced practitioners in the nation.

You need no further proof of this than the *Daily Journal's* annual list of Top Labor & Employment lawyers. As you read through these pages you will find attorneys on the plaintiffs' and defense side involved

in every major labor and employment issue of the day. We considered 250 attorneys in compiling a list of 75. We did not include general practitioners, even those who argued marquee labor or employment cases. We wanted this list to be about litigators, and corporate and regulatory specialists.

— The Editors

TOP 75 LABOR & EMPLOYMENT LAWYERS



MALCOLM A. HEINICKE
MUNGER, TOLLES & OLSON LLP
San Francisco
Specialty: Class actions, trade secrets, counseling

Heinicke considers a high point of his practice in the past 18 months to be his successful battle against class certification for meal-and-rest-period claims against a security services firm — one that he said threatened millions of dollars in damages.

He led a team that secured a denial of class certification on the lead claims and dismissal of the associated penalty claims, using arguments that were based on what he said were largely untested areas of the law concerning break periods. *Temple v. Guardsmark LLC*,

2011 WL 723611 (N.D. Cal., Feb. 22, 2011); *Temple v. Guardsmark LLC* 2010, 2010 WL 1461629 (N.D. Cal. April 7, 2010).

“It was the most rewarding and challenging case,” said Heinicke, a partner in the San Francisco office of Munger, Tolles & Olson LLP. “You have many meal-and-rest-period laws, and you have many companies that do all they can to comply with the law, yet the law is unclear. It’s one of the many things that makes these cases challenging. You have companies that have gone to great lengths to treat their employees fairly, but, because of the uncertainty of the law, they are subject to lawsuits.”

That uncertainty has employment lawyers holding their breath, waiting for the state Supreme Court to decide on the closely watched *Brinker* restaurants case, dealing with employee meal breaks.

“I think some of the lower courts recognize that we can’t operate in a vacuum,” Heinicke said. “We have to do the best that we can. But it’s difficult for clients trying to comply with the law. The *Guardsmark* ruling is particularly gratifying.”

In another case, Heinicke said he was especially thrilled to have successfully represented baseball legend Willie Mays, winning a personal services arbitration for him.

“There were moments in the whole proceeding where I’d pick up my head and look next to me and think, ‘I’m handling this matter for Willie Mays.’ It was very excit-

ing. It’s really a neat experience when someone is a celebrity and a hero to you, and gets involved with you personally.”

Among his other notable cases in the past 18 months, Heinicke, along with Munger partner Terry Sanchez, obtained a dismissal of putative class action pending in federal court, seeking to invalidate requirements that Merrill Lynch Financial Advisors and other employees trade securities internally. *Heilemann v. Bank of America Corp.*, CV-10-8623-GW(JCx), (C.D. Cal. 2011).

They successfully argued that the plaintiffs’ efforts to invoke California’s prohibition on employee “forced patronage” is preempted by federal securities law.

On behalf of a major financial services firm, Heinicke successfully litigated and resolved a putative class action attacking the validity of promissory notes executed by financial services industry employees.

Heinicke also has seen his work with trade secrets cases heating up.

“There really are a lot of employment situations where employees have access to significant confidential information,” he said. “We’re seeing a lot come out of Silicon Valley and the creative centers around Hollywood. Between the non-compete laws and the industries, we have in this state fertile ground for trade secret litigation.”

— Pat Broderick