

Daily Journal

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LABOR & EMPLOYMENT

California's Top Labor & Employment Lawyers

EDITORS' NOTE

Who's an employer?

That is one of the most significant questions to emerge in the past year.

Whether in the context of franchised operations, independent contractors or staffing agencies, businesses across the country are puzzling over how regulators and courts will draw the line amid tectonic shifts in the global economy.

For the lawyers on the Daily Journal's list of top practitioners in California, employment has been and will remain one of the busiest areas of the law. Their accomplishments continue to boost the state's influence over the rest of the country.

In reviewing hundreds of nominations from law firms, alternative dispute resolution providers and others, we sought to recognize work that is having a broad impact on the legal community, the nation and society. We honor the best of them.

Malcolm A. Heinicke

FIRM: Munger, Tolles & Olson LLP	CITY San Francisco	SPECIALTY Complex litigation
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As "exciting" as he finds class certification denials and summary judgments, Heinicke takes particular pride in a class action he recently managed to take from seven years of litigation to victory in a three-month-long class arbitration hearing.

Entering during the class certification proceedings, Heinicke led the legal team representing Service Employees International Inc. and affiliated government contractors against allegations by more than 7,000 truck drivers that they were subjected to a de facto policy requiring them to underrecord time worked supporting the military in Iraq.

"[The drivers] are, by all accounts, great Americans, and people who deserve our respect," Heinicke said.

Initially, the workers claimed they weren't allowed to record more than 84 hours of work per week. So Heinicke's team investigated. "We gathered up all the time records and showed that, in fact, a majority of the weekly time records were for more than 84 hours, so how could there have been a policy that you couldn't record more than 84 if everyone was doing it?" Heinicke said.

The plaintiffs came back and said there was actually a weekly cap on the hours

workers could record, Heinicke said.

"That created this daunting challenge," he said. "They were alleging that every week the number changed and it was being communicated orally."

So Heinicke and his team proceeded to collect the time records for all 7,000 truck drivers for every week, sort them by base and plot them on a graph that showed the number of hours recorded to be "heavily scattered."

"That was one of those 'aha' moments," Heinicke said. "It was hard, objective data for what our clients were telling us all along."

While the other side had four firms, Heinicke's had "only four lawyers."

"We were dealing with very good, very capable opposing counsel, and that's when wins are most satisfying," he said.

At the end of the case, the arbitrator said it was the best-lawyered case he'd ever seen.

— Alison Frost