

Ed Sullivan

Relevant Employment Law Experience

Significant Achievements

- Won a nationally significant overtime case 12 judges to six before an *en banc* U.S. Court of Appeals for the Fifth Circuit. *Hewitt v. Helix Energy Solutions Group, Inc.*, 2021 WL 4099598 (5th Cir. Sept. 9, 2021).
- Upon reconsideration by the panel, won a 2-1 decision from the U.S. Court of Appeals for the Fifth Circuit on behalf of Tool Pusher seeking overtime based on the fact that the company paid him on a day rate. *Hewitt v. Helix Energy Solutions Group, Inc.*, 983 F.3d 789 (5th Cir. 2020) (opinion withdrawn for *en banc* consideration).
- Won a panel decision 3-0 from the U.S. Court of Appeals for the Fifth Circuit. *Hewitt v. Helix Energy Solutions Group, Inc.*, 956 F.3d 341 (5th Cir. 2020) (opinion withdrawn for panel reconsideration)
- Successful defense bench trial verdict in a case in which the Plaintiff sought \$1 million. *Hyman v. KD Resources, LLC*, Cause No. 2012-32430; In the 129th Judicial District Court of Harris County (Judge Michael Gomez).
- Employee permanently dropped federal race and retaliation claims without any money paid by our client for those claims. (S.D. Tex.) (2019) (Atlas, J.).
- In a claim in which we represented an employer before the National Labor Relations Board, the claimant withdrew her complaint after our response without any money paid by our client.
- Won a complete victory at arbitration for our client against an employee who claimed unlawful discrimination. *Caballero v. Bechtel OG&C Construction (AAA)* (2019).
- Won two-day jury trial and trial court entered judgement in our client, the Plaintiff's, favor, for \$168,644.22, in *Robert Fleming v. The Momenta Group LLC d/b/a Momentum Fitness Solutions and Grant Moyer*, Civil Action No. 4:15-cv-00075, 2016 WL 7742788 (S.D. Tex. June 27, 2016), a FLSA retaliation case (Judge David Hittner).
- Won summary judgment in 2017 in a same sex harassment case. *Smith v. MTC*, No. 4:16-cv-00176-A, In the United States District Court for the Northern District of Texas.
- Plaintiff multi-million dollar victory after a four-day jury trial in May 2014, In the United States District Court for the Southern District of Texas, an unlawful retaliation case.

- Defense victory for Kirkland and Ellis on Motion to Dismiss in November 2013 in *Oberc v. BP PLC*, Civil Action No. 4:12-cv-1382; In the United States District Court for the Southern District of Texas.
- Plaintiff jury verdict after a four-day jury trial in August 2012 in *Brett Czarnecki, et al v. Diesel Pros, LLC*, Cause No. 153-248153-0; In the 153rd Judicial District Court of Tarrant County, a Fair Labor Standards Act case.
- Eleventh Circuit victory in *Cunningham v. Nature's Earth Pellets, L.L.C.*, 433 Fed. Appx. 751 (11th Cir. July 6, 2011) (affirming summary judgment in an Americans with Disabilities case).
- Fifth Circuit victory in *Fahim v. Marriott Hotel Servs. Inc.*, 551 F.3d 344 (5th Cir. 2008) (affirming summary judgment in a national origin discrimination case)
- Fifth Circuit victory in *Bugos v. Ricoh Corp.*, 2008 WL 3876548 (5th Cir. Aug. 21, RES2008) (affirming summary judgment in a reverse sex discrimination case).
- State Appellate Court victory in *Dias v. Goodman Mfg.*, 214 S.W.3d 672 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (affirming summary dismissal of a retaliation lawsuit).
- Defense jury verdict after a two-day jury trial in May 2007 in *Javier Guevara v. Goodman Mfg.*, Cause No. 2006-092923; In the 280th Judicial District Court of Harris County, a worker's compensation retaliation lawsuit (Judge Tony Lindsay).
- Defense jury verdict after a three-day jury trial in April 2005 in *Peter Geiger v. Merck Medco*, Cause No. DV99-7184; In the 44th Judicial District Court of Dallas County, a TCHR retaliation lawsuit (Judge David Kelton).
- Defense jury verdict after a three-day jury trial in March 2005 in *Brian James Johnsen v. Baker Hughes Inc.*, Civil Action No. MO-04-068; In the Western District of Texas, Midland-Odessa Division, an Americans with Disabilities Act discrimination case (Judge Robert Junell), *aff'd*, 178 Fed. Appx. 386 (5th Cir. 2006).
- Denial of Plaintiffs' motion for class certification after extensive participation in four-day non-jury evidentiary hearing in November 2004 in *Fermin Colindres, et al. & EEOC v. Quietflex Mfg. Co. L.P.*, et al., Civil Action No. H-01-4319; In the U.S. District Court for the Southern District of Texas, Houston Division (Judge Lee Rosenthal). Subsequently, the Court denied Plaintiffs' motion for class certification. *See Colindres v. Quietflex Mfg.*, 235 F.R.D. 347 (S.D. Tex. 2006).
- Defense jury verdict after a four-day jury trial in December 2003 in *Richard Davis v. Merck Medco*, Cause No. DV99-7184; In the 44th Judicial District Court of Dallas County, a TCHR retaliation lawsuit (Judge Kelton).

Noteworthy Published Appellate Cases

- *Hewitt v. Helix Energy Solutions Group, Inc.*, 983 F.3d 789 (5th Cir. 2020) (opinion withdrawn for *en banc* consideration)
- *Hewitt v. Helix Energy Solutions Group, Inc.*, 956 F.3d 341 (5th Cir. 2020) (opinion withdrawn for panel reconsideration)
- *Cunningham v. Nature's Earth Pellets, L.L.C.*, 433 Fed. Appx. 751 (11th Cir. 2011)
- *Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344 (5th Cir. 2008)
- *Bugos v. Ricoh Corp.*, 2008 WL 3876548 (5th Cir. Aug. 21, 2008)
- *Dias v. Goodman Mfg.*, 214 S.W.3d 672 (Tex. App.—Houston [14th Dist.] 2007, pet. denied).
- *Johnsen v. Baker Hughes*, 178 Fed. Appx. 386 (5th Cir. 2006)
- *Esparza v. Telerx Mktg.*, 174 Fed. Appx. 806 (5th Cir. 2006)
- *Harris-Childs v. Medco Health Solutions of Tex. LLC*, 169 Fed. Appx. 913 (5th Cir. 2006)
- *Emerson v. Johnson*, 243 F.3d 931 (5th Cir. 2001)
- *Jackson v. Johnson*, 217 F.3d 360 (5th Cir. 2000)
- *Molo v. Johnson*, 207 F.3d 773 (5th Cir. 2000)
- *Felder v. Johnson*, 204 F.3d 168 (5th Cir.), *cert. denied*, 531 U.S. 1035 (2000)
- *Alexander v. Johnson*, 163 F.3d 906 (5th Cir. 1998)
- *Fields v. Johnson*, 159 F.3d 914 (5th Cir. 1998)

Noteworthy Published District Court Cases

- *Coffin v. Blessey Marine Servs., Inc.*, 163 Lab. Cas. P 36, 092 (S.D. Tex. 2013)
- *Jones v. SuperMedia, Inc.*, 281 F.R.D. 282 (N.D. Tex. 2012)
- *Payne v. Goodman Mfg. Co., L.P.*, 726 F. Supp. 2d 891 (E.D. Tenn. 2010)
- *Colindres v. Quietflex Mfg.*, 235 F.R.D. 347 (S.D. Tex. 2006)
- *Colindres v. Quietflex Mfg.*, 228 F.R.D. 567 (S.D. Tex. 2005)
- *Ledford v. Thomas*, 144 F. Supp. 2d 709 (S.D. Tex. 2000), *aff'd*, 275 F.3d 471 (5th Cir. 2001)

Upcoming & Past Presentations

“*Effective Mediation Strategies*,” State Bar of Texas, Austin, Texas (April 2021).

“*Top Fifth Circuit Cases of 2020*,” Houston Bar Association's Labor and Employment Section, Houston, Texas (February 2021)

“*Top 15 Fifth Circuit Employment Law Cases of 2020*,” State Bar of Texas, Austin, Texas (February 2021)

“*Employment Law in the Wake of COVID-19*,” LNH Leadership North Houston, Houston, Texas (December 2020)

“Top 10 Damage Traps For Lawyers Bringing Employment Law Cases,” Houston Bar Association, Houston, Texas (May 2020)

“Top 15 Fifth Circuit Employment Law Cases of 2019,” State Bar of Texas, Austin, Texas (December 2019)

“Best Mediation Practices,” Oberti Sullivan LLP CLE, Houston, Texas (May 2019)

“What Mediators Need to Know About Employment Litigation,” Houston Bar Association, Houston, Texas (May 2019)

“Top 15 Fifth Circuit Employment Law Cases of 2018,” State Bar of Texas, Austin, Texas (January 2019)

“Top 15 Fifth Circuit Employment Law Cases of 2018,” State Bar of Texas, Austin, Texas (January 2019)

“Top 15 Fifth Circuit Employment Law Cases of 2018,” Houston Bar Association, Houston, Texas (January 2019)

“Ethics in the Workplace - How To Handle The Sensitive Investigation,” Institute for Energy Law, Houston, Texas (October 2018)

“SLAPP Your Opponents (And Save Your Clients Lots Of Money) By Learning About The Texas Anti-SLAPP Act, The Most Useful New Tool In The Employment Lawyer’s Toolkit,” State Bar of Texas, Austin, Texas (October 2018)

“Best Mediation Practices,” Oberti Sullivan LLP CLE, Houston, Texas (June 2018)

“Top 15 Fifth Circuit Employment Law Cases of 2017,” State Bar of Texas, Austin, Texas (February 2018)

“Top 12 Fifth Circuit Employment Law Cases of 2017,” Houston Bar Association, Houston, Texas (January 2018)

“Top 10 Labor and Employment Law Mistakes Employers Make,” State Bar of Texas, Austin, Texas (November 2017)

“2017: Cutting Edge Retaliation and Whistleblowing Claims And Defenses,” State Bar of Texas, Austin, Texas (August 2017)

“Suing or Defending the Departing Texas Employee, Including Non-Competes, Trade Secrets, and Fiduciary Duties,” Houston Bar Association, Houston, Texas (June 2017)

“Injunctive Relief-What Judges Care About,” Oberti Sullivan LLP CLE, Houston, Texas (May 2017)

“Top 12 Mistakes Made By Employers And How To Counsel Your Client To Avoid Them,” Houston Bar Association, Houston, Texas (May 2017)

“Sexual Harassment In The Workplace,” KCOH Radio, Houston, Texas (April 2017)

“2017 Non-Compete, Trade Secrets, and Inevitable Disclosures,” State Bar of Texas, Austin, Texas (April 2017)

“Top Ten Fifth Circuit Employment Law Cases of 2016,” Houston Bar Association, Houston, Texas (March 2017)

“Top Ten Fifth Circuit Employment Law Cases of 2016,” State Bar of Texas, Austin, Texas (February 2017)

“Ten ADA Issues That Continue to Confound and Confuse Employers, and Give Hope To Even Slightly Impaired Plaintiffs and their Lawyers,” State Bar of Texas, Austin Texas (November 2016)

“Top 10 Ways Plaintiffs Try to Prove Pretext in Discrimination and Retaliation Cases,” State Bar of Texas, Austin, Texas (August 2016)

“ADA Issues That Continue to Confound and Confuse Employers, and Give Hope To Even Slightly Impaired Plaintiffs and their Lawyers,” Houston Bar Association's Labor & Employment Section, Houston, Texas (August 2016)

“Top 5 Fifth Circuit Cases of the Past 12 Months,” Oberti Sullivan LLP CLE, Houston, Texas (May 2016)

“Top 10 Fifth Circuit Cases Of the Past Twelve Months,” Houston Bar Association, Houston, TEXAS (April 2016)

“In House Counsel Employment Law Primer: 10 Tips For Identifying Risk, Minimizing Liability, and Creating Clarity and Calm out of Confusion and Chaos,” State Bar of Texas, Austin, Texas (March 2016)

“Top 10 Recent Fifth Circuit Cases,” State Bar of Texas, Austin, Texas (November 2015)

“Voir Dire: Finding Your Enemies,” UT Law CLE, Houston, Texas (October 2015)

“Labor and Employment Seminar,” Jackson Walker LLP Presentation, Houston, Texas (October 2015)

“The Fifth Circuit and Employment Law Cases 2014-2015: What You Need To Know,” Houston Bar Association's Labor and Employment Section, Houston, Texas (October 2015)

“Hot Topics In Employment Law,” Annual Judicial Education Conference, Dallas, Texas (September 2015)

“The FLSA: Ask the 800lb Gorillas,” Oberti Sullivan LLP CLE, Houston, Texas (April 2015)

“Top 10 Employment Law Issues In The Oil Patch,” State Bar of Texas, Austin, Texas (April 2015)

“Recent Developments in Causation Standards in Employment Cases,” 2015 Advanced Employment Law CLE in Dallas, Texas (January 2015)

“Four Examples of Modern Constitutional Interpretation,” Garland Walker American Inn of Court, Houston, Texas (January 2015)

“Top 10 Fifth Circuit Employment Law Cases Every Lawyer Must Know,” State Bar of Texas, Austin, Texas (October 2014)

“Voir Dire Tactics,” State Bar of Texas, Austin, Texas (October 2014).

“FLSA Litigation: Views from the Tips of the Spears,” Houston Bar Association's Labor and Employment Section, Houston, Texas (August 2014)

“ADA and FMLA: Solving Their Most Complex Challenges,” Top Trial Lawyer CLE, Houston, Texas (May 2014)

“Sex, Words, and 50 Shades of Causation,” Fifth Circuit Judicial Conference, San Antonio, Texas (May 2014)

“ADA: Direct Threat and Enforcing Conduct Rules,” State Bar of Texas, Austin, Texas (April 2014)

“Department of Labor Practice & Procedure,” Houston Bar Association’s Labor and Employment Section, Houston, Texas (January 2014)

“Supreme Court Review,” Houston Bar Association’s Labor and Employment Section, Houston, Texas (August 2013)

“Punitive Damages: How Employers Avoid Them, How Employees Obtain Them,” South Texas College of Law’s In House Counsel Conference and 26th Annual Employment Law Conference, Houston, Texas (July 2013)

“2013 Update: Texas Noncompete Law; Trade Secrets Litigation; Texas Adopts The Uniform Trade Secrets Act; Inevitable Disclosure Doctrine; and Fiduciary Duties,” State Bar of Texas, Austin, Texas (June 2013)

“15 Things You Need To Know About The New Wave of Retaliation, Dodd-Frank, and SOX Whistleblower Claims,” State Bar of Texas, Austin, Texas (March 2013)

“Top 10 Ethical Traps for Employment Lawyers (And How To Avoid Them),” State Bar of Texas, Austin, Texas (November 2012)

“Employment Law Ethics – Surreptitiously Recording Conversations,” American Petroleum Labor Lawyers’ Association,” Houston, Texas (October 2012)

“Employment Law 2012 – 10 Hot New Developments All Lawyers Need to Know,” State Bar of Texas (July 2012)

“FLSA: How to Prosecute and Defend Texas Overtime Claims,” State Bar of Texas (December 2011)

“Rumbles in the ‘C’ Suite – Representing Texas Executives in Employment Disputes,” State Bar of Texas (October 2011)

“Retaliation Claims: Welcome to the Danger Zone,” State Bar of Texas, Austin, Texas (July 2011)

“Top 10 Mistakes Employers Make, and How to Prevent Them.”

- Oberti Sullivan LLP podcasts (summer 2011)
- State Bar of Texas, Austin, Texas (September 2010)

“Analysis of the Supreme Court’s Decision in Wal-mart Stores, Inc. v. Dukes,” Oberti Sullivan LLP website (June 2011)

“A Day in the Life Of An Employment Lawyer,” University of Houston Law Center, Houston, Texas (February 2011)

“Family and Medical Leave Act – How to Comply,” State Bar of Texas, Austin, Texas (February 2011)

“Texas Non-Compete and Trade Secrets Update,” State Bar of Texas, Austin, Texas (December 2010)

“Alternative Fee Arrangements In The New Economy,” Garland Walker American Inn of Court, Houston, Texas (November 2010)

“Ethical Issues In The Employment Context,” Houston Bar Association, Houston, Texas (November 2010)

“Disability Law Update 2010,” Houston Bar Association, Houston, Texas, (October 2010)

“FLSA Litigation – Including Collective Actions”

- University of Houston Advanced Employment Law CLE, Houston, Texas (May 2009)
- University of Houston Advanced Employment Law CLE, Dallas, Texas (May 2009)
- University of Houston Advanced Employment Law CLE, Houston, Texas (April 2008)
- University of Houston Advanced Employment Law CLE, Dallas, Texas (April 2008)
- Houston Bar Association Litigation Section, Houston, Texas (November 2007)
- University of Houston Advanced Employment Law CLE, Dallas, Texas (June 2007)
- University of Houston Advanced Employment Law CLE, Houston, Texas (June 2007)

“Disability Law Update 2009”

- University of Houston Advanced Employment Law CLE, Dallas, Texas (March 2009)
- March 2009, University of Houston Advanced Employment Law CLE, Houston, Texas (March 2009)

“Courtroom Advocacy,” Illinois Bar Association, Chicago Illinois (November 2008)

“Handling Reductions In Force in This Economy,” Seyfarth Shaw LLP Breakfast Briefing in Houston, Texas (November 2008)

“Five Ways to Reduce Employment Litigation Costs,” Association of Corporate Counsel of America, Houston, Texas (May 2008)

“Litigation Hold Letters & Document Preservation Obligations in FLSA Cases,” Seyfarth Shaw LLP National Videoconference, Houston, Texas (May 2007)

“FLSA Litigation Strategies”

- Council on Education in Management, Houston, Texas (February 2007)
- Lorman Education Services, Houston, Texas (January 2007)
- Council on Education in Management, Houston, Texas (October 2006)
- Lorman Education Services, Houston, Texas (October 2006)
- Seyfarth Shaw LLP Breakfast Briefing, Houston, Texas (June 2006)
- “FLSA Discovery Strategies – Summary Judgment And Beyond,” Seyfarth Shaw LLP Videoconference, Houston, Texas (July 2006)

“Justice Scalia On The Establishment Clause,” Garland R. Walker American Inn of Court, Houston, Texas (March 2006)

“Federal Court Practice In The Southern District of Texas – Typical Traps For The Unwary,” Houston Bar Association, Houston, Texas (December 2005)

“Interviewing and Hiring Basics,” National Law Enforcement Recruiters’ Association, Washington, D.C. (September 2005)

“Is Big Brother Watching? Privacy In The Workplace,” Gallagher Benefit Services, Inc., Houston, Texas (June 2005)

“Overtime Litigation-Defendant’s Perspective; Avoiding and Defending Claims,” UHLC Advanced Employment Law CLE, Dallas, Texas (April 2005)

“Limitations on the At-Will Employment Doctrine,” Lorman Education Services, McAllen, Texas (November 2004)

“The Importance of Effective Documentation,” Lorman Education Services, McAllen, Texas (November 2004)

“Navigating the New Overtime Regulations”

- Houston Hotel & Motel Association, Houston, Texas (October 2004)
- Houston Area Builders and Contractors, Houston, Texas (September 2004)
- Society of Human Resource Managers, Harlingen, Texas (August 2004)

“Historical Origins of the Freedom of Press Clause to the U.S. Constitution,” Garland R. Walker American Inn of Court, Houston, Texas (February 2004)

“Managing the Most Difficult FMLA Dilemmas,” Council on Education in Management, Houston, Texas (May 2003)

“What Federal Judges Expect From Judicial Interns,” University of Houston Law Center, Houston, Texas (May 2003)

“Differences Between District Judges and Magistrate Judges,” University of Houston Law Center, Houston, Texas (May 2002)

“Expectations Placed Upon Federal Law Clerks,” University of Houston Law Center, Houston, Texas (April 2001)