



## Kenneth W. DiGia

Member of the Firm

### **New York**

875 Third Avenue  
New York, New York 10022  
Tel: 212-351-4610  
Fax: 212-878-8600

[kdigia@ebglaw.com](mailto:kdigia@ebglaw.com)

---

**KENNETH W. DIGIA** is a Member of the Firm in the Employment, Labor & Workforce Management practice, in the firm's New York office. Mr. DiGia's experience includes the following:

- Representing employers in the defense of putative collective actions under the Fair Labor Standards Act and class actions under New York State Labor Law involving the misclassification of employees, compensation for hours worked, salary basis issues, and so on, in cases with potential classes of more than 50,000 employees. Claims of misclassification have included executive, administrative, outside sales, and companionship exemptions.
- Representing employers in litigation, administrative proceedings, and arbitrations concerning discrimination claims, wrongful discharge, and employment-at-will.
- Advising management on a variety of employment law issues, including helping design personnel policies, manuals, and handbooks.

Representative matters include:

- Defeated two requests for nationwide collective action certification where the employee claimed that she and all putative collective action members were misclassified under the executive exemption because they routinely engaged in non-exempt duties. Also defeated request for Rule 23 class certification. The United States Court of Appeals for the Second Circuit affirmed the denial of Rule 23 class certification.
- Obtained dismissal of class and collective action claims under the FLSA and NYLL following an Offer of Judgment that plaintiff rejected. After plaintiff rejected the offer, the Court dismissed the action for lack of subject matter jurisdiction, holding that the offer provided the plaintiff with full relief and there was nothing left to litigate.
- Resolved claims under the New York Wage Theft Prevention Act, tip credit, spread of hours, uniform pay, meal deductions, and so on.

- Obtained a dismissal of overtime claims at the pleading stage, later upheld by the United States Court of Appeals for the Second Circuit for failure to properly plead claims under the FLSA. This Second Circuit decision was one of three decisions outlining the standards for pleading FLSA claims in the Second Circuit.
- Achieved a nominal settlement that included withdrawal of class allegations of claims brought under New York Labor Law § 196-d alleging that employer failed to comply with tip-related requirements for private dining functions.
- Persuaded plaintiffs to withdraw without any monetary payment collective action claims premised on the allegation that a night shift differential was not properly included in the overtime rate of pay.

Mr. DiGia has been involved in a number of cases that have been published, including:

- *United States ex rel. Rattan v. Episcopal Health Serv.*, No. 11-cv-6259 (ADS), 2015 U.S. Dist. LEXIS 174197 (E.D.N.Y. July 13, 2015) (district court granted defendants' motion for summary judgment dismissing plaintiff's False Claims Act and Title VII claims)
- *Myers v. The Hertz Corp.*, 624 F. 3d 537 (2d Cir. 2010) (affirming district court's denial of class certification)
- *Anderson v. The Hertz Corp.*, 303 Fed. Appx. 946 (2d Cir. 2008) (affirming district court's grant of summary judgment in claim of race discrimination)
- *Ward v. The Bank of N.Y.*, 455 F. Supp. 2d 262 (S.D.N.Y. 2006) (granting motion to dismiss for lack of subject matter jurisdiction based on rejection of offer of judgment)

## **Education**

- Fordham University School of Law (J.D., 1988)
- University of Rochester (B.A., with distinction, 1985)

## **Court Admissions**

- U.S. Court of Appeals for the Second Circuit
- U.S. District Court, District of Colorado
- U.S. District Court, Eastern District of New York
- U.S. District Court, Northern District of New York
- U.S. District Court, Southern District of New York

## **Bar Admissions**

- New York

## **Practice Areas**

- Class Actions
- Employment Litigation
- ERISA and Benefit Plan Litigation
- Wage and Hour

**Industries**

- Health Care and Life Sciences Industry
- Financial Services