

Employment Group Of The Year: Epstein Becker Green

By Anne Cullen

Law360 (January 22, 2025, 4:04 PM EST) -- Epstein Becker Green's employment team convinced the Fifth Circuit to strike down a major U.S. Department of Labor rule governing employers' ability to take tip credits out of servers' wages, a blockbuster achievement that snagged it a spot as one of the 2024 Law360 Employment Groups of the Year.

The firm's labor and employment group represents a huge chunk of its total bench — accounting for nearly 150 of its more than 300 attorneys — as the practice area is one of Epstein Becker's core specialties. The group is concentrated within the firm's New York, Chicago and California offices, but their projects regularly transcend those boundaries, said David W. Garland, co-chair of the firm's employment, labor and workforce management practice.

"We don't operate in a siloed way by office," he said. "You may find people who are in our Columbus office working on New York cases, because they have expertise in that case."

While they have some generalists, Garland said his team is mostly focused on particular disciplines, carving out niches in legal arenas like wage, discrimination, labor, trade secrets and benefits and on cutting-edge topics like artificial intelligence.

"We really want people to be deep in their specialty because clients are not looking for research, they're looking for practical answers from experienced practitioners, and that's what we deliver," Garland said.

Garland said this depth of knowledge is why clients turn to them for assistance on complex legal issues, like the restaurant groups that tapped Epstein Becker to spearhead their challenge to the DOL's rule curbing the circumstances in which a restaurant could pay tipped employees the subminimum wage.

Under the Fair Labor Standards Act, tipped workers can be paid that rate as long as tips bring them up to the standard federal hourly minimum wage of \$7.25.

The DOL's rule, which went into effect at the end of 2021, mandated employers pay full minimum wage to tipped workers who spend more than 20% of the workweek on tasks not directly engaged in tip-producing work. Employers also had to pay full minimum wage to tipped workers once they spent more than 30 consecutive minutes on tip-supporting, as opposed to tip-producing, work.



The change was lauded by progressive groups as a potential "ladder out of poverty" for some workers, but restaurant owners said it was complicated, unnecessary and in violation of the FLSA.

Epstein Becker member Paul DeCamp, who previously headed up the DOL's wage and hour division under former President George W. Bush, was the lead attorney behind the industry challenge, stepping up to the lectern during two trips to the Fifth Circuit.

The firm won big after the second go-round. In August, a Fifth Circuit panel wiped out the rule, agreeing with the restaurant owners' position that it contravenes the FLSA.

The decision not only upended the DOL's tip regulations, but demonstrated how courts' assessment of agency power has shifted in the wake of the U.S. Supreme Court's decision in June overturning Chevron deference.

The now-defunct doctrine directed courts to defer to agency interpretations of statutes when there is ambiguity in the text. The nullification of the DOL's tip rule represented one of the early appellate uses of the post-Chevron framework to overturn a regulation.

DeCamp, who co-leads Epstein Becker's wage and hour team, told Law360 that it was a lengthy battle — the legal challenge was initially filed at the tail end of 2021, and a district court twice ruled against the restaurant owners — but he said the ultimate victory was made possible by the commitment from his clients and his colleagues.

"We understood, and had prepared from the outset, that this was not a fight that was going to end in the district court," DeCamp said. "In a matter like this, we have to understand what the long game is."

Epstein Becker's specialists were additionally called on by the retail industry this past year to bolster a challenge to the Federal Trade Commission's ban on noncompetes.

Several members of its trade secrets team lodged an amicus brief in May on behalf of nearly a dozen trade organizations, arguing the commission lacked authority to institute the blanket prohibition. In August, a Texas federal judge permanently blocked the rule, finding the commission exceeded its statutory authority.

While these policy challenges garnered headlines, co-chair Garland said they are only a snapshot of his team's work.

"We have trial successes and summary judgment successes throughout the course of the year," he said. "There are plenty of others on a daily basis."

Among those are a pair of litigation wins for recruiting and staffing agency Aerotek.

After a March trial, a 12-person jury backed Aerotek in a former manager's defamation and pregnancy discrimination case, in which the worker had been seeking \$34 million in damages. And then in June, Epstein Becker litigators were able to secure an arbitration win for Aerotek in a case that could've turned into a massive Private Attorneys General Act class action. A federal court confirmed the award in October.

Mike S. Kun, a longtime Epstein Becker attorney who heads up the firm's wage and hour team alongside

DeCamp, was lead counsel on both of those Aerotek matters, and he credited his tight-knit, hardworking team for the results.

Kun said he's sometimes considered an "old school" lawyer, in that he isn't averse to overtime or weekend work. And he said he's gratified his colleagues are on the same page.

"I'm so proud of the fact that I've been able to put together this team of people who approach this as a career, not as a job," he said. "They know that sometimes it's long hours."

Generally, Kun said he works with a group of about five other lawyers, all based in the firm's Los Angeles office, who handle up to 180 cases in active litigation at any given time. Because of the hefty number of projects, Kun said they've learned to be efficient and creative.

"We don't have the luxury of spending countless hours on projects because of our caseload," he said. "This past year very much spoke to how we were able to do that."

Looking ahead, Garland told Law360 the strategy is to stay the course. He said the firm plans to add "strength to strength," not widen its core focus areas, or upsize without good reason.

"We have no ambition to grow for growth's sake. We're looking for talented practitioners at the highest level where we're already focused," he said. "We're not looking to expand into other practice areas, we're not looking to be all things to all people."

"We're going to continue to focus on our strength in labor and employment," Garland said.

--As told to Anne Cullen. Editing by Alyssa Miller.