

John C. Gardner

Partner

Madison, Wisconsin

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Service Areas:

- Eminent Domain
- Labor & Employment Relations
- Litigation
- Title Insurance & Litigation

Education:

- J.D., *magna cum laude*, Marquette University Law School
- Senior Note and Comment Editor, Marquette Law Review
- B.S., University of Wisconsin-Madison

Admissions:

- Illinois
- Wisconsin
- U.S. District Court for the Central District of Illinois
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the District of Colorado
- U.S. District Court for the Eastern and Western Districts of Wisconsin
- U.S. Court of Appeals for the 7th Circuit
- U.S. Court of Appeals for the 10th Circuit Court

John Gardner is a partner at DeWitt LLP, one of Wisconsin's largest law firms. He serves as Chair of the Firm's Labor and Employment practice group, and is also a member of the Firm's Litigation and Eminent Domain practice groups.

Employment | Labor Law and Related Specialties

John is a management-side labor & employment attorney. Since 2004, he has represented employers across the United States in lawsuits involving claims for violations of wage and hour laws (including the Fair Labor Standards Act ("FLSA")), violations of the Fair Credit Reporting Act ("FCRA"), violations of anti-discrimination, anti-harassment and leave/accommodation laws, as well as claims for breach of contract. In addition, he regularly represents employers in collective bargaining negotiations, labor-related arbitration proceedings and in front of the National Labor Relations Board ("NLRB"). Notwithstanding his extensive litigation experience, however, John understands that litigation is often an employer's last resort, and a costly one at that. As a result, he has tailored much of his practice to helping employers avoid litigation altogether, regularly advising them regarding various legal compliance issues relating to employment and labor law.

Significantly, John has developed two main specialties within employment law:

1. Day-To-Day Employment Counseling

First, he regularly provides day-to-day legal counseling to employers located throughout the state of Wisconsin (and many with operations across the country). This counseling ranges from helping employers handle emergency disciplinary issues, safety concerns (including OSHA complaints/compliance) and employee theft matters, to assisting employers in managing long-term employee leave situations and making strategically-minded policy changes. In addition, since the first few months of 2020, he has been constantly advising employers on the ever-changing legal landscape created by the COVID-19 pandemic and the government's responses to the pandemic.

2. Restrictive Covenants/Covenants Not-to-Compete

Second, John has developed a detailed understanding of the appropriate language, use and limits of restrictive covenants, such as non-compete, non-solicitation, and confidentiality provisions. He regularly advises employers regarding the appropriate manners in which to structure and utilize restrictive covenants, and has represented employers across the country with respect to lawsuits/threatened legal actions, both on the side of the party attempting to enforce the agreements and the party attempting to avoid enforcement.

Employer Clients and Representative Laws

Since beginning his practice, John has represented employers of all sizes and from all types of industries, including, construction, trucking, agricultural, religious education, restaurant, cable installation, manufacturing, healthcare, software, engineering, redistribution, staffing services, and financial services, to name a handful. These employers include members of the Fortune 500, as well as businesses that have no more than one or two permanent employees.

Among many others, John has provided counseling and/or represented employers with respect to the following laws: the Fair Labor Standards Act ("FLSA"), the Fair Credit Reporting Act ("FCRA"), the National Labor Relations Act ("NLRA"), the Family and Medical Leave Act ("FMLA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), the Computer Fraud and Abuse Act, the Occupational Safety and Health Act ("OSHA"), Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act ("ADA"), the Wisconsin Wage Payment and Collection Act, the Wisconsin Fair Employment Act ("WFEA"), the Wisconsin Family and Medical Leave Act, and the Illinois Human Rights Act ("IHRA").

Eminent Domain, Licensing Representation and other Litigation

In addition to his employment law work, John regularly represents businesses and individuals in connection to a wide variety of other civil disputes. These include intellectual property litigation, commercial breach of contract actions, and defamation proceedings, among others.

In addition, John has developed two further legal specialties. First, for a number of years now, John has represented landowners with respect to condemnation/eminent domain disputes and proceedings. These include matters initiated by a variety of governmental actors, including utilities, the Wisconsin Department of Transportation, cities, towns, villages and other entities with condemning authority.

Second, John regularly represents Wisconsin licensees, including chiropractors, veterinarians and physicians, in disciplinary actions initiated by the Wisconsin Department of Safety and Professional Services, and in connection to complaints filed with other Wisconsin agencies, such as the Wisconsin Department of Consumer Protection.

Affiliations

- American Bar Association
- Board of Directors for Community Living Alliance - President
- Board of Directors for the Middleton Chamber of Commerce - President

Articles & Presentations

- "The Federal Trade Commission Proposes a Rule Banning Non-Compete Clauses – What Should Employers Do?" – DeWitt Employment Law News Feed, Jan 2023
- "Remote Work and Employee Leave – What Leave-Related Issues Do Wisconsin Employers Need to Stay on Top of With Respect to a Remote Work Environment?" – DeWitt Employment Law News Feed, Jun 2022
- Workplace COVID-19 Vaccination Policies and Safety Protocols Following the Administration's "Path out of the Pandemic" –

State Bar of Wisconsin Presentation, October 2021

- Recent COVID-19 Legal Developments – Dane County Bar Association Presentation, October 2021
- September 2021 COVID-19 Workplace Update – Wisconsin Institute of CPAs Presentation, September 2021
- "What Can/Should Wisconsin Employers Do Following the CDC's New Mask Guidance?" – DeWitt Employment Law News Feed, May 2021
- "Returning to Work: What Employers and Employees Want to Know" – Middleton Chamber of Commerce Presentation – April 2021
- Assessing the Employment Impacts of H.R. 1319 – the American Rescue Plan Act – Wisconsin State Bar Presentation, April 2021
- "Not (Completely) Dead (Just) Yet – The Status of the FFCRA Following Passage of the COVID-related Tax Relief Act of 2020" – DeWitt Employment Law News Feed, January 2021
- "Assessing the Employment Impacts of H.R. 6201 - The Families First Corona Virus Relief Act" – State Bar of Wisconsin PINNACLE seminar, March 2020
- "President Signs the Family First Coronavirus Relief Act - What are the New Time Off Obligations that Covered Employers must Address?" – DeWitt Employment Law News Feed, March 2020
- "Not So Fast: You Mean There's A Potential Downside to Class Action Waivers In Employment Arbitration Agreements?" – DeWitt Employment Law News Feed, February 2020
- "Illinois' New Sexual Sexual Harassment Training - Who Needs to Comply?" – DeWitt Employment Law News Feed, February 2020
- "The National Labor Relations Board Returns an Economic Weapon to an Employer's Collective Bargaining Arsenal" – DeWitt Employment Law News Feed, December 2019
- "Your Employee Tweeted What?!" – InBusiness Magazine, October 2018
- Presenter: "The Lifecycle of an Employment Relationship in Six Acts" – DeWitt Fall Employment Law Seminar, October 2018
- Co-Presenter: "Can You Fire the Chronic Complainer" – MRA -The Management Association, May 2017
- Presenter: "Calculating Overtime: What landmines Should You Watch Out For?" – DeWitt Employment Seminar, September 2016
- "The EEOC Increases its Efforts to Combat Gender-Based Pay Discrimination" – DeWitt Employment Law News Feed, February 2016
- Presenter: "Documentation, Documentation, Performance Evaluations, and Did I Mention Documentation" – Client Presentation, August 2015
- "Wisconsin Enacts Right-To-Work" – DeWitt Employment Law News Feed, March 2015
- Co-Presenter: "The Migrant Seasonal Agricultural Worker Protection Act" – Professional Dairy Producers of Wisconsin, February 2015
- "Social Media – An Employer's Forbidden Fruit?" – DeWitt Employment Law News Feed, August 2014
- Panel Member: "Sexual Orientation & Gender Identity in the Workplace" – Wisconsin State Bar, April 2014
- "Four Common Mistakes Employers Make with Exempt Employees and Overtime Pay" – DeWitt Employment Law News Feed, January 2014
- "Madison Adds New Ordinance Prohibiting Unemployment Discrimination During Hiring Process" – DeWitt Employment Law News Feed, December 2013
- Co-Presenter: "How to Avoid the Biggest Overtime & Wage Mistakes" – WICPA, November 2013
- Co-Presenter: "Can You Fire the Chronic Complainer" – 27th Annual WI SHRM State Conference, October 2013
- Co-Presenter: "Employment Law Hot Topics" – Celerity Staffing Solutions Roundtable, October 2013
- "October 1, 2013 – A Hard Deadline to Notify Employees of Health Insurance Options or Another False Step for Obamacare?" – DeWitt Employment Law News Feed, September 2013
- Presenter: "Sex Discrimination, the Equal Pay Act, and Retaliation in the Workplace" – Client Presentation, August 2013
- "EEOC's New Disability Changes for 2013" – DeWitt Employment Law News Feed, May 2013
- "I Spy a New I-9 Form for 2013" – DeWitt Employment Law News Feed, March 2013
- "How to Deal With Retaliation in the Workplace" – DeWitt Employment Law News Feed, February 2013
- "DOL Issues New FLMA Regulations and Poster for 2013" – DeWitt Employment Law News Feed, February 2013
- Presenter: "Can You Fire the Chronic Complainer" – DeWitt HR Roundtable, February 2013
- "The EEOC Foreshadows its Plan of Attack" – DeWitt Employment Law News Feed, January 2013
- "The Growing Trend of Individual Employee Liability" – DeWitt Employment Law News Feed, December 2012
- "Time to Rethink Maximum Leave Policies" – DeWitt Employment Law News Feed, November 2012
- Co-Presenter: "Hot Topics In Employment Law" – Celerity Staffing Solutions Roundtable, September 2012
- "At-Will Employment Disclaimers Attacked by NLRB" – DeWitt Employment Law News Feed, August 2012
- Presenter: "Where's Walter? Understanding and Addressing Employee Leave Requests" – UW Family Business Center, DeWitt

Employment Law Seminar, June 2012, September 2012, November 2011

- Co-Presenter, "Hot Topics in Employment Law" – Celerity Staffing Solutions Training Seminar, May 2011
- Co-Author, "Insulate Your Company Against Sexual Harassment Claims: Five Important Reminders" – DeWitt HR Advantage, April 2011
- "5 Ways to Prevent a Sexual Harassment Lawsuit" – DeWitt Employment Law News Feed, April 2011
- Presenter: "Don't Get Sacked: Five Lessons to Learn from the Recent Sexual Harassment Claim Filed Against a Former Quarterback and One of His Former Teams" – DeWitt HR Roundtable, March 2011
- Presenter: "You Hired Them Now What?" – DeWitt Employment Law Seminar, November 2010

Awards & Recognitions

- 2012-2017 Wisconsin Rising Star – Employment Litigation/Defense, Wisconsin Super Lawyers® Magazine

Notable Representations

John has successfully represented businesses in state and federal courts in Wisconsin, California, Colorado, Florida, Illinois, Kansas, Michigan, Mississippi, Missouri, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, Washington, and Puerto Rico, as well as in front of numerous federal and state administrative agencies. Examples of his representations are below.

Eminent Domain

- Cascade Mountain Land Holdings, LLC v. American Transmission Company LLC et al., Columbia County Case No. 17-CV-368, (2019); successfully represented a property-owner client involved in an eminent domain dispute, helping to obtain a multi-million dollar just compensation verdict against American Transmission Company ("ATC") following a two-week-plus jury trial, in connection to ATC's Badger-Coulee transmission line project. Because the condemnation verdict was more than 15% greater than ATC's final jurisdictional offer, ATC was also legally obligated to reimburse DeWitt's client for all reasonable attorneys' fees and expenses it incurred in the litigation

Employment Litigation

- Successfully settled wage and hour class action brought against employer by cable installers who claimed they had been misclassified as independent contractors (W.D. Wis. 2017)
- Successfully settled non-compete enforcement action on behalf of employer that was brought against former employee who left to work for a direct competitor (Harris County, Tex. 2017)
- Obtained summary judgment and successfully defended appeal on behalf of employer with regard to the Equal Employment Opportunity Commission's claim that the employer's wellness plan violated the ADA (7th Cir. 2017)
- Obtained injunction and successful settlement on behalf of employer whose former employee misappropriated/misdirected business opportunities (Dane County, Wis. 2017)
- Obtained summary judgment and successfully defended appeal on behalf of employer in case alleging various violations of the Fair Credit Reporting Act with respect to information reported through HireRight, Inc. (10th Cir. 2016)
- Obtained injunction and successful settlement on behalf of employer whose former employee engaged in civil theft and misappropriated confidential information (Buffalo County, Wis. 2015)
- Obtained partial summary judgment for cable-installer employer on claims regarding alleged violations of the Illinois Prevailing Wage Act in wage and hour class action matter (N. D. Ill. 2015)
- Obtained summary judgment and successfully defended appeal on behalf of employer relating to former employee's multi-million-dollar breach of contract claims (Wis. Ct. App. 2012)
- Obtained multiple summary judgment rulings for employer on multi-plaintiff discrimination/retaliation claims (W.D. Tenn. 2010)
- Obtained a ruling invalidating non-compete on behalf of appellants and successfully defended that ruling on appeal (Vir. Ct. App. 2007)

Other Business Litigation

- Won week-long jury trial on behalf of dairy farm in lawsuit involving competing claims for negligent misrepresentation, private nuisance and negligence (Dane County, Wis. 2017)
- Obtained significant jury verdict on behalf of trucking company in a lawsuit involving claims for copyright infringement relating to advertising for open truck driver positions (D. Kan. 2016)

DeWitt LLP Law Firm

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