

CLIFTON BUDD & DeMARIA, LLP



*Serving Management
in Labor and Employment Matters
for Over a Century*

CLIFTON BUDD & DEMARIA, LLP

Who We Are

Clifton Budd & DeMaria is one of the nation's first labor and employment law firms. For over 100 years, the firm has exclusively represented employers in all aspects of employee relations. Laws have changed and times have changed, but our unwavering commitment to management never has and never will.

The firm's philosophy is to understand its clients' needs and to serve those needs in the most efficient manner possible. We do this by providing unparalleled attention to our clients and using the firm's knowledge, experience, and skill to respond to their needs. In the varied field of labor and employment law, our approach may vary from matter-to-matter, but our attention to our clients will not.

Our History

We trace our lineage back to William Gordon Merritt, who was among the foremost management attorneys in the country during the rise of unionism in the 1900s. Mr. Merritt represented D. E. Loewe & Company in the seminal 1908 Danbury Hatters U.S. Supreme Court case. In 1902, D. E. Loewe & Company declared its Danbury, Connecticut hat factory to be an open shop, causing the AFL to subject it to a nationwide boycott. The Supreme Court sided with Mr. Merritt's arguments and ruled that the AFL's boycott violated the Sherman Antitrust Act.

In 1934, Mr. Merritt hired Henry Clifton, Jr. as his associate. Mr. Clifton, then a young Princeton and Harvard Law School graduate, was charged with the task of studying the "new labor bill signed by President Roosevelt." That new labor bill was the National Labor Relations Act, the federal law that today governs labor relations in the private sector.



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During the years that followed, Mr. Clifton developed a national renown for his cutting edge skills with the intricacies of the NLRA. Mr. Clifton went on to found the labor law section of the American Bar Association and for 20 years served the American Arbitration Association as director, executive committee member, and chairman of its practice committee. He was awarded the Whitney North Seymour medal for his work in the promotion of arbitration.

In 1959, the firm became Buell Clifton & Turner. Mr. Clifton's partner, William "Big Bill" Turner, was a well-known and highly respected management negotiator. Thomas W. Budd joined Buell Clifton & Turner as an associate attorney. In 1969, Mr. Budd, who has gone on to build a reputation as a highly regarded traditional labor lawyer, formed a partnership with Mr. Clifton. In 1976, Alfred T. DeMaria, preeminent in the field of assisting employers during union organization drives, joined forces with them. Clifton Budd & DeMaria was born.

Clifton Budd & DeMaria continues Henry Clifton's pioneering spirit. The years since the Danbury Hatters case was decided have been punctuated with legal and cultural changes in the workplace, but we have continued to provide the full complement of labor and employment law services our management clients have come to expect.

Our Clients

Clifton Budd & DeMaria has a nationwide labor and employment law practice. Our clients include Fortune 500 companies, medium, and small-sized national and international businesses. We serve clients in the private, non-profit, and public sectors. The firm represents employers in virtually all industries including: health care, real estate, building services, manufacturing, technology, retail, hospitality, government, education, chemicals, construction, cosmetics, printing, transportation, financial services, insurance, professional services, beverage distribution, food services, restaurant, media, and the arts.

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Strategic Counseling, Investigations, Audits, and Training

Laws governing the employment relationship are multiple and varied, leaving unprepared employers exposed to a diverse universe of potential liabilities. Employers, regardless of size, must be well-versed in the laws governing their workplace and ensure that their supervisors understand their legal responsibilities. The key to providing effective advice is more than just knowledge of legal principles. It includes the ability to incorporate into our role as legal advisor an understanding of the business needs of our clients. To this end, we provide our clients with strategic counseling, training, and investigative services to enable them to comply with the law.

Strategic Counseling

The areas in which we provide strategic counseling include:

- Affirmative action;
- Arrest and criminal records;
- Asset sale and purchase transactions;
- Audits by government agencies;
- Bankruptcy due diligence and advice related to labor and employment matters;
- Business immigration;
- Collective bargaining;
- Collective bargaining agreement administration;
- COBRA and state-mandated continuing health coverage;
- Decertification and representation proceedings;
- Disciplinary measures and procedures;
- Discrimination, harassment, and retaliation;
- Double-breasted operations;
- Employee benefits;
- Employee classification and independent contractor status issues;
- Employee counseling;



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Strategic Counseling, Investigations, Audits, and Training (pg. 2)

- Employment agreements;
- Executive compensation;
- Fringe benefit plans;
- Grievances and arbitration;
- Healthcare reform;
- Hiring process - background checks, I-9 forms, drug and other testing, application and interview inquiries;
- Investigations into employee matters;
- Labor laws;
- Layoffs;
- Leaves - FMLA, military, and other leaves of absence;
- Multi-employer bargaining;
- National Labor Relations Board proceedings;
- Non-competition and non-solicitation agreements and trade secrets;
- Occupational safety and health;
- Pension and retirement plans;
- Personnel policies, procedures, handbooks, and manuals;
- Plant closings, relocations, and consolidations;
- Privacy laws;
- Reasonable accommodation;
- Reductions-in-force and corporate restructuring;
- Social media;
- Terminations;
- Unemployment compensation;
- Union avoidance;
- Union organizing;
- Wage-and-hour compliance;
- WARN Act and similar state legislation;
- Whistleblower claims;
- Workers' compensation;
- Workplace safety and security; and
- Workplace violence and bullying.

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Strategic Counseling, Investigations, Audits, and Training (pg. 3)

Investigations and Audits

Our attorneys conduct investigations into sensitive and complex client matters. If it is necessary to hire an outside investigative firm, we manage the investigation to ensure compliance with applicable law and maximize the protection of client interests and confidences.

We also guide clients through government audits and our attorneys conduct internal audits to measure compliance with applicable laws.



Training

In addition to our counseling and investigative services, we provide training for employees, managers, supervisors, and human resource professionals. Common training programs focus on:

- Effective performance management;
- Establishment of workplace diversity;
- Handling requests for accommodation and leaves of absence;
- Implementation of disciplinary measures and terminations;
- Prevention of unlawful harassment and discrimination; and
- Union avoidance.

Our attorneys effectively tailor training programs and their content to our clients' specific needs.

Labor-Management Relations

For more than a century, Clifton Budd & DeMaria has advanced the interests of its clients in their relations with organized and unorganized work forces. We have done so by conducting union avoidance training, negotiating collective bargaining agreements, providing advice to assist in the administration of collective bargaining agreements, advocating our clients' positions in grievances and arbitrations, litigating issues arising out of union relationships, and providing advice related to labor-management implications of business closures, sales, and mergers. Our breadth of experience ranges from small operations with just a few workers to multi-facility operations with thousands of workers across the country. It spans the fields of manufacturing, real estate, building services, health care, retail, construction, hospitality, food services, the arts, media, and many more.

Union Organizing and Avoidance

The firm has blazed the trail of union avoidance that predates the first decisions of the National Labor Relations Board. In this area, Clifton Budd & DeMaria helps employers maintain and obtain a harmonious and independent environment with their workers by educating them on both employer and worker rights. We provide training to supervisory staff to guide them through the many potential legal pitfalls before, during, and after union organizing occurs.

Collective Bargaining

Clifton Budd & DeMaria has decades of experience negotiating initial and renewal collective bargaining agreements. We team with operations, human resources, finance, legal, and other client representatives to negotiate labor agreements that meet or exceed all management goals and culminate in a peaceful and constructive manner that creates a foundation for favorable future operations.



Labor-Management Relations (pg. 2)

Collective Bargaining Agreement Administration

For many employers, working in an organized work environment with a labor union is part of doing business. A union contract invariably complicates day-to-day business operations by imposing restrictions on employers that go beyond the substantial obligations already imposed by the many laws and regulations governing the workplace. Our attorneys partner with our clients' operations, human resource, legal, and employee relations personnel to guide them through the maze created by union contracts and applicable laws. When disputes arise and grievances are filed, our focus turns from compliance to advocacy. We stand ready to assist or lead in grievance meetings and arbitration hearings. The firm embraces the reality that in a labor-management relationship, once the particular dispute is over, the employer and the union still have to work together. We never lose sight of this.

Agency and Court Representation

In labor relations disputes and controversies, our attorneys appear before agencies and courts across the nation to protect and advance our clients' interests. Whether we are defending against an unfair labor practice charge, demanding that petitions properly define a bargaining unit, or filing a charge against a union, the NLRB is a familiar place for Clifton Budd & DeMaria's legal team.

Clifton Budd & DeMaria also has a rich history of trial and appellate level litigation, including some of the more esoteric areas of labor and employment law, such as mandating arbitration of statutory disputes, challenging arbitration awards, and defending against claims related to union breaches of the duty of fair representation owed to workers.

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Labor-Management Relations (pg. 3)

Benefit Fund Disputes

The deterioration of the health of employee benefit funds has resulted in increased litigation and alternative dispute resolution. These funds are focusing on delinquencies and withdrawal liability vigorously, both because they have a mandate to do so and because they need the revenue those efforts produce. Even when exemplary in reporting workers and remitting fund contributions, our clients increasingly find themselves under the scrutiny of fund audits. In these cases, we advocate against imposition of liability. Since these funds have the power to impose not only interest, but liquidated damages and attorneys' fees, any delay or expansion of liability can be extremely costly. Our early intervention in an audit or dispute helps to control exposure for what can quickly become a significant liability.

Change of Control

As the economy fluctuates, businesses are bought, sold, merged, and closed. Clifton Budd & DeMaria regularly assists clients and their transaction counsel with the intricacies of the labor-related issues that must be addressed when a business's ownership changes. All too frequently, labor, pension, and benefit issues are overlooked until the end of these deals, despite the dramatic and potentially costly impact of not handling them properly. This is another area where Clifton Budd & DeMaria can bring great value to a client.



Employment Litigation

While we guide employers, both large and small, with legal and practical advice designed to avoid litigation, sometimes, it is unavoidable. When our clients are confronted with litigation, we provide a comprehensive multi faceted approach to winning cases. Our attorneys try matters in court and administrative agencies. We develop strategies designed to protect management's interest in the most efficient manner possible.

We represent employers in all types of disputes, including:

- Breach of contract;
- Class actions;
- Commission disputes;
- Defamation;
- Discrimination, harassment, and retaliation based upon race, color, religion/creed, sex/gender, national origin, citizenship, age, disability, genetic information, marital status, sexual orientation, partnership status, uniformed service/military status, status as a victim of domestic violence, sex offense and/or stalking, and unemployment status;
- Employee Retirement Income Security Act of 1974 (ERISA) and employee benefits;
- Family and Medical Leave Acts (FMLAs);
- Occupational Safety and Health Act (OSHA) matters;
- Restrictive covenants;
- Unemployment;
- Uniformed Services Employment and Reemployment Rights Act (USERRA);
- Unlawful harassment;
- Wage-and-hour;
- Whistleblower; and
- Wrongful termination.



Wage-and-Hour Litigation

In recent years, few areas of litigation have expanded more rapidly than wage-and-hour claims brought by current and former employees against their employers. While Clifton Budd & DeMaria began defending employers against these types of claims long before this recent explosion, defense of wage-and-hour claims has become an even more significant part of our litigation practice.

Our attorneys have defended countless employers from wage-and-hour claims. The claims have covered virtually every aspect of the wage-and-hour laws, including claims based upon:

- **Bonuses, Commissions, and Fringe Benefits.** Commissions, fringe benefits, or bonuses were either unpaid or incorrectly calculated.
- **Independent Contractor Misclassifications.** An independent contractor should have been classified as an employee.
- **Minimum Wage Violations.** Failure to pay the applicable minimum wage.
- **Overtime.** Employees were not paid overtime either because they were misclassified as exempt employees or due to improper time recording or other noncompliance with wage-and-hour laws.
- **Tips and service charges.** Improper tip practices and specific state law violations, such as the improper use of service charges. Restaurants and other hospitality industry businesses in particular have been the focus of many wage-and-hour plaintiffs' attorneys and improper handling of tips and service charges are often the foundation of such claims.
- **Unpaid meals and breaks.** Breaks were provided partially or not at all.

We defend employers against these claims in state and federal courts. Often, these lawsuits seek multi-million dollar recoveries. While the bulk of these claims are brought by plaintiffs' lawyers, we also defend employers against these claims when they are brought by the federal or state Departments of Labor or by unions.

As in all litigation we handle, our defense strategies are rooted in the firm's philosophy of providing practical, efficient solutions to client problems.

Employee Benefits

Our benefits attorneys advise clients on all issues related to employee benefits, including retirement plans, health and welfare plans, and executive compensation. They also litigate claims in each of these categories.

Retirement Plans

Our attorneys have extensive experience in the full range of employee retirement plans, including defined contribution, 401(k), money purchase, defined benefit, cash balance, 457(b) and (f), and 403(b) plans.

The principal areas in which we assist clients are:

- Advising on the tax treatment of plan contributions and distributions (including required minimum distributions);
- Correcting plan qualification defects through the Employee Plans Compliance Resolution System and correcting Form 5500 filing defects through the Delinquent Filer Voluntary Compliance Program;
- Counseling on the unique requirements for establishing, maintaining, and terminating church plans;
- Designing procedures to review Qualified Domestic Relations Orders (QDROs);
- Designing, drafting, and amending qualified retirement and welfare plans, trust agreements, and administrative service agreements;
- Drafting and reviewing employer communications to employees, including summary plan descriptions and summaries of material modifications;
- Negotiating acquisition and sale agreements, including the treatment of multi-employer pension plans and collective bargaining agreements, in order to protect management interests;
- Preparing determination letter applications for qualified plans and negotiating with the Internal Revenue Service to obtain favorable determination letters for qualified plans; and
- Reviewing and updating plans to ensure continued compliance with the Internal Revenue Code (IRC), ERISA, Age Discrimination in Employment Act (ADEA), and other evolving legislative and regulatory requirements.

For clients with multi-employer plans, we provide advice to minimize the risk of withdrawal liability in the event of a claim resulting from a reduction-in-force, plant closing, corporate transaction or other event. If a plan assesses withdrawal liability, we assist our clients in eliminating or reducing that assessment. For plan trustees, we provide advice on how to comply with their fiduciary obligations under ERISA while furthering management's goals.

Employee Benefits (pg. 2)

Health and Welfare Plans

We advise clients with respect to the design, implementation, and administration of the many available types of health and welfare plans including cafeteria, dependent care, flexible benefits, retiree medical, health savings accounts, health reimbursement accounts, and severance plans. Health and welfare plans are subject to a myriad of complex legal requirements, such as the IRC, ERISA, Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Affordable Care Act (ACA). Our benefits attorneys help clients with:

- Developing strategies to comply with and implement the ACA in a manner that accomplishes our clients' goals while minimizing costs;
- Drafting employee communications, including summary plan descriptions, COBRA notices, HIPAA privacy notices, and ACA notices;
- Ensuring health and welfare plan compliance with all applicable Federal and State legal requirements; and
- Preparing "wrap" plan documents to minimize reporting requirements and ensure compliance with disclosure requirements.



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Executive Compensation

We draft employment contracts and executive compensation arrangements that address our clients' concerns regarding recruitment, retention, and maintenance of a competitive market position. Arrangements include executive severance plans, equity arrangements, incentive plans, and supplemental executive retirement plans. We assist clients with issues related to:

- Correcting operational and documentary failures related to compensation arrangements in accordance with IRS procedures;
- Ensuring that deferred compensation arrangements comply with IRC Section 409A and other legal requirements; and
- Negotiating employment and termination agreements on behalf of employers, whether the agreements are related to corporate transactions or ongoing operations.

Litigation

We defend clients and challenge assessments in litigation related to benefit denials, compliance with fiduciary duties, withdrawal liability, and audit results from multi-employer pension and welfare plans. We frequently advise employers and plan sponsors on best practices to avoid or minimize litigation risk.

“Our benefits attorneys advise clients and litigate on all issues related to employee benefits, including retirement plans, health and welfare plans, and executive compensation.”

Workplace Health and Safety

The firm's workplace health and safety practice assists employers in providing a safe workplace for their employees. We also defend employers in proceedings brought by the Occupational Safety and Health Administration ("OSHA") and comparable state agencies.

We help clients inspect worksites to ensure compliance with OSHA standards, conduct training programs, develop and implement comprehensive corporate safety plans, and draft safety policies to assure compliance with OSHA standards. We do not merely tell our clients what the law requires. We work to understand their business operation fully in order to develop compliant programs, workplaces, and policies that best serve their needs.

Even the most vigilant employers sometimes find themselves subject to OSHA inspections. We provide assistance from the initial on-site inspection through the appeal stage.

Our OSHA attorneys' extensive experience in responding to OSHA citations allows them to provide clients with the necessary information to decide whether to settle or challenge a citation.

If the decision is to settle a citation, we work efficiently to resolve the matter as favorably as possible. If the decision is to challenge the citation, we aggressively pursue all available defenses at the administrative hearing and through the appellate process, if necessary.

Whatever workplace health and safety issues our clients face, we are well-positioned to provide them with comprehensive solutions.

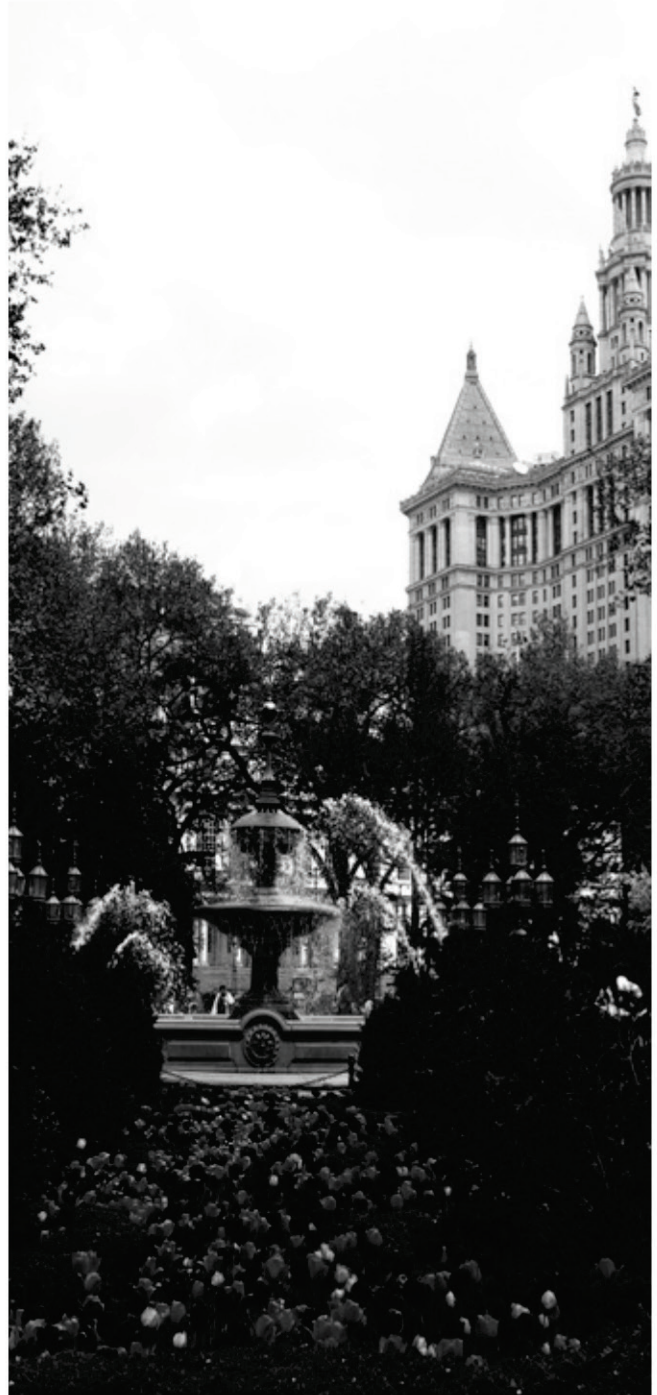
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Public Sector Labor and Employment Law

Clifton Budd & DeMaria has represented public sector clients since the Taylor Law went into effect in 1967. Our attorneys have great familiarity with many public sector unions such as CSEA, PEF, AFSCME, DC 37 in collective bargaining negotiations, interest arbitrations, grievance and arbitration and contract administration. We are well-versed in the Taylor Law, the Civil Service law, and issues arising under the New York State Retirement System and the Government Employees Health Insurance Program ("Empire Plan"). The firm has extensive experience representing public employers before the New York State Public Employment Relations Board (PERB), mini-PERBs, the state and local Civil Service Commissions, and the New York State Department of Labor.

The firm's roster of public sector clients includes public hospitals, municipalities, and fire districts. From this background, the firm has a wealth of experience representing public sector clients in state and federal court litigation and is keenly attuned to the claims and defenses that often arise in public employment disputes.



Business Litigation

Because we have achieved many positive results in labor and employment litigation, clients frequently ask us to represent them in other types of business litigation as well. We have successfully represented clients in litigation involving shareholder, partnership, joint venture, and closely held corporation disputes, trade secrets, trade name and copyright infringement, breach of contract, insurance coverage disputes, construction claims, antitrust claims, franchise disputes, fraud, replevin, misappropriation, breach of fiduciary duty, breach of warranty and product liability, breach of promissory notes, and enforcement of liens. Our business litigation practice includes the prosecution and the defense of these types of claims.

We bring our litigation experience and resources to bear to achieve timely, efficient, and cost effective results for our clients. We apply the same philosophy to our business litigation that we apply to our employment litigation; our clients' business interests are paramount. We are ever mindful of the burdens that litigation can impose. Litigation is often a last resort and our clients' resources may be limited. Our clients are involved in every step of the litigation process. We provide them with timely, accurate assessments, which we frequently update. If early resolution of a business dispute is desired, we actively pursue it. Where a favorable early resolution is not attainable, our clients have the confidence of knowing that they have experienced and well-prepared trial lawyers eager to protect their interests zealously.



Immigration Practice

Clifton Budd & DeMaria assists employers in successfully navigating through legal issues related to work authorization. We advise employers on compliance requirements related to Form I-9 and issues regarding employee and applicant work authorizations.

The firm's immigration counsel is well-versed in obtaining temporary and permanent visas for foreign workers our clients seek to hire for, or transfer to, positions as executives, managers, and other key positions requiring specialized knowledge. We provide thorough, pro-active, and cost-effective representation, working closely with our clients through the processes and procedures of the United States Citizenship and Immigration Services, the United States Department of Labor, and the United States Department of State.

