



## Practice Areas

- Labor & Employment
- Education
- Intellectual Property
- Construction
- Military
- Nonprofit

## Education

- University at Buffalo Law School, J.D., 2005
  - *Buffalo Law Review*
- State University of New York College at Oswego, B.A., *cum laude*, 2002

## Admissions

- Military Trial Courts
- New York
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court for the Northern District of New York
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Western District of New York
- U.S. Supreme Court

# Robert C. Whitaker, Jr.

## PARTNER

P: 315.565.4557

F: 315.565.4600

rwhitaker@hancocklaw.com

Robert C. Whitaker, Jr. is a partner in the Labor & Employment, Construction and Intellectual Property Practices. He is Chair of the Firm's Labor & Employment Department and Leader of the Military Law Practice, and formerly served as Chair of the Hiring Committee. Mr. Whitaker focuses his practice on representing private employers in all aspects of state and federal labor and employment law. Mr. Whitaker regularly defends employers before state and federal agencies and in the courts regarding claims under Title VII, Age Discrimination in Employment Act, Americans with Disabilities Act, Fair Labor Standards Act, Uniformed Services Employment and Reemployment Rights Act, New York State Human Rights Law and all other New York state labor laws. He also has experience litigating other employment disputes regarding employment contracts, including enforcement of non-compete agreements and other restrictive covenants. In addition, he regularly enforces copyrights in federal court on behalf of national and international musical composers, authors and lyricists.

Prior to joining the Firm, Mr. Whitaker served as a Defense Attorney for the Navy Judge Advocate General's Corps (Navy JAG Corps), representing active duty military personnel in military federal courts throughout the southeastern United States. He also served as Deputy Staff Judge Advocate and Prosecutor for the Commanding General of the 2nd Marine Logistics Group in Al Anbar, Iraq. Since joining the Firm, Mr. Whitaker has continued to serve in the Navy Reserve where he holds the rank of Lieutenant Commander. In this capacity, Mr. Whitaker has served as an instructor at the Naval Justice School teaching newly commissioned attorneys how to best litigate administrative separation boards and perform legal assistance services. Mr. Whitaker continues to represent clients in matters involving Veteran Benefits, Administrative Separation Boards, Courts-Martial, Boards of Inquiry, Non-Judicial Punishment (Article 15s) and correction of military records, including discharge upgrades.

## Representative Matters

- Successfully defended defense jury verdict and partial summary judgment on appeal to the Second Circuit, affirming dismissal of all claims of employment discrimination and retaliation (Second Circuit, 2018)
- Obtained summary judgment for employer, resulting in dismissal of state and federal law claims of age and disability discrimination (U.S. District Court, Northern District of New York 2017).
- Obtained defense jury verdict for large corporate client dismissing all claims of retaliation by a former employee under the ADA, ADEA and NYS Human Rights Law

(U.S. District Court, Northern District of New York 2017).

- Obtained full dismissal and defeated subsequent appeal on behalf of the State of New York in a multi-million dollar USERRA and NY Military Law class action (NYS Supreme Court, 2014, aff'd Third Dep't 2016).
- Obtained summary judgment for employer, resulting in dismissal of all discrimination claims under the ADA and Title VII (U.S. District Court, Northern District of New York 2016).
- Obtained a favorable jury verdict as co-counsel for a pharmacist who was unlawfully discriminated and retaliated against by his employer based on a disability. The jury awarded the client just over \$2.6 million in total damages (U.S. District Court, Northern District of New York 2015).
- Obtained summary judgment declaring an employment agreement and the related restrictive covenants void and unenforceable as a matter of law, allowing a nurse practitioner to work for a new employer (NYS Supreme Court, 2015).
- Successfully defended large manufacturer against action seeking to void various restrictive covenants in employment agreement (NYS Supreme Court, 2014).
- Obtained a full dismissal of discrimination claims based on pregnancy and disability following an administrative trial before a New York State Division of Human Rights Administrative Law Judge (2013).
- Obtained a favorable jury verdict as co-counsel for a senior administrator of a large police department against various claims of discrimination and retaliation pursuant to the ADA, Title VII, First Amendment § 1983 and New York State Human Rights Law (U.S. District Court, Northern District of New York 2010).
- Obtained a favorable jury verdict against the State of New York for a pro se plaintiff in a pro bono matter, based on claims of First Amendment retaliation and Eighth Amendment unlawful conditions of confinement (U.S. District Court, Northern District of New York 2010).
- Obtained a full dismissal of discrimination claims, based on gender and disability following an administrative trial before a New York State Division of Human Rights Administrative Law Judge (2009).
- Obtained numerous findings of No Probable Cause for employers against charges of retaliation and discrimination, based on gender, race, religion and disability before the New York State Division of Human Rights as well as administrative dismissals by the EEOC.
- Successfully represented various employers during investigations by the New York State Department of Labor for alleged wage and hour violations, resulting in either closure of the investigation without further action or favorable settlements.
- Successfully represented various employers in numerous hearings and appeals before the New York State Unemployment Insurance Appeal Board, resulting in the denial of unemployment benefits to former employees.
- Obtained numerous dismissals for various employers against charges of workers compensation discrimination following administrative hearings before the New York State Workers Compensation Board.
- Obtained multiple judgments (including reimbursement of attorney's fees), permanent injunctions and favorable settlements for numerous national and international artists and musicians in federal court for copyright infringement pursuant to the Copyright Act.
- Successfully led a class action petition to a Navy BCNR, resulting in the retroactive

promotion and back pay of 30 Naval Officers.

- Successfully petitioned a Navy BCNR, resulting in a full reinstatement of lifetime pension benefits, including back pay, for the surviving widow of a veteran.
- See the [Military Law Practice](#) page for more information on Mr. Whitaker's representation of active military personnel and veterans.

### **Professional Credentials**

- Member, Clear Path for Veterans Advisory Board
- Co-Chair, Onondaga County Bar Association Veterans' Rights & Military Law Section
- Member, Cornell University Cooperative Extension of Onondaga County
- Member, Onondaga County Volunteer Lawyers Project
- Member, Syracuse City Court Small Claims Arbitration Program
- Member, New York State Bar Association
- Member, Onondaga County Bar Association
- Member, Northern District of New York Federal Court Bar Association Pro Bono Committee
- Member, Northern District of New York Federal Court Bar Association

### **Honors & Recognitions**

- Rated, AV Preeminent, Martindale-Hubbell
- Selected, New York – Upstate, *Super Lawyers* (2017-2020)
- Selected, Upstate New York *Super Lawyers* – Rising Star (2013-2016)
- Recipient, Syracuse Vet Center Award (2013)
- Recipient, Robert J. Connelly Award for Excellence in Trial Advocacy

### **Press & Publications**

#### **News**

- [What Employers Need to Know About Recent Changes to New York's Sexual-Harassment Laws](#)
- [The Importance of Making Your Website Compliant with the ADA](#), "Central New York Business Journal"
- ["The First Amendment Fallacy: Collin Kaepernick's 'Constitutional Right' to Protest"](#), law.com

#### **Publications**

- [Labor & Employment Law Alert: U.S. Department of Labor Ends the Payroll Audit Independent Determination Program](#)
- [Labor & Employment Law Alert: Employers Should Prepare for NYS Sick Leave Requirements](#)
- [Environmental Law Alert: EPA and CDC Guidance on Cleaning and Disinfecting Public Spaces, Workplaces, Businesses and Schools](#)
- [Labor & Employment Law Alert: PPP Loan Forgiveness: SBA Authorizes Exclusion of](#)

## Employees Who Refuse to Work

- [Labor & Employment Law Alert: New York State Budget Creates New Paid Sick Leave Program](#)
- [Labor & Employment Law Alert: New York State Requires Employers to Provide Face Coverings for Employees Who Directly Interact With the Public During COVID-19](#)
- [Labor & Employment Law Alert: USDOL Issues Temporary Regulations Implementing the Families First Coronavirus Response Act](#)
- [Tax and Labor & Employment Law Alert: Small Business Employer Benefits during the COVID-19 Crisis](#)
- [Labor & Employment Law Alert: New York State Health Department Issues Protocols for Essential Personnel to Return to Work Following COVID-19 Exposure or Infection](#)
- [Labor & Employment Law Alert: USDOL Issues New Emergency Leave Poster](#)
- [Labor & Employment Law Alert: The Families First Coronavirus Response Act](#)
- [Labor & Employment Law Alert: New York State and Federal COVID-19 Paid Leave Requirements](#)
- [Labor & Employment Law Alert: Exemptions to the Governor's Workforce Density Restrictions](#)
- [Labor & Employment Law Alert: Employers Should Update Sexual Harassment Policies & Training](#)
- [Labor & Employment and Education Law Alert: NYS Prohibits Race Discrimination Based on Hairstyle](#)
- [Labor & Employment Law Alert: NYSDOL Issues Revised Proposed Scheduling Regulations](#)
- [Labor & Employment Law Alert: New York State Releases Sexual Harassment Training Videos and Overview Webinar](#)
- [Labor & Employment Law Alert: New York State Issues Final Model Sexual Harassment Policy and Training Requirements](#)
- [Labor & Employment Law Alert: New York State Issues Draft Model Sexual Harassment Policy and Training](#)
- [Labor & Employment Law Alert: Changes to New York's Sexual Harassment Laws](#)

## Speaking Engagements

- [The 2021 Municipal Bootcamp Program](#)
- [COVID-19 Considerations for Employers](#)
- [Labor & Employment Law Webinar: "2020 Focus: COVID Challenges and Lessons Learned"](#)
- [Business Tactics: COVID-19 & The Workplace](#)
- [Human Resource Law: The Ultimate Guide](#)
- [Labor & Employment Breakfast Club: Writing Effective Job Descriptions](#)
- [Hancock Estabrook's 15th Annual Labor & Employment Symposium](#)
- [JAG Panel](#)
- [Labor & Employment Sexual Harassment Policy and Training Session](#)
- [Labor & Employment Sexual Harassment Policy and Training Session](#)

- Labor & Employment Sexual Harassment Policy and Training Session
- Tompkins County SHRM, “Disability Rules Under the ADA & NYSHRL”
- Labor & Employment Sexual Harassment Policy and Training Session
- Recently Enacted Sexual Harassment Laws
- Hancock Estabrook 14th Annual Labor & Employment Law Symposium
- New York State Harassment Laws – What Employers Should Know
- New York State Sexual Harassment Laws Update
- Hancock Estabrook Sixth Annual Advisors to Small Business Symposium
- Labor & Employment Breakfast Club, “Recent Changes to NYS Sexual Harassment Laws”
- Handling a Prisoner Case: Trial Advocacy for Pro Bono Lawyers: Albany
- Handling a Prisoner Case: Trial Advocacy for Pro Bono Lawyers: Syracuse
- Tompkins County Workforce Development Board, “New York State’s Paid Family Leave”
- Hancock Estabrook’s 13th Annual Labor & Employment Law Symposium
- Labor & Employment Breakfast Club, “New York’s War on Non-Compete and Non-Solicitation Agreements: How to Prevent Unlawful Competition”
- REVISED TOPIC – Labor & Employment Breakfast Club, “What the Recent Injunction on the DOL’s Overtime Rule Means for Employers”
- Lorman Education Services Webinar, “Protect Your Company from Employee Poaching”
- Hancock Estabrook 12th Annual Labor & Employment Law Symposium
- Labor & Employment Breakfast Club, “Preparing for the New Year: 2016 Changes to the New York State Human Rights and Labor Laws”
- Hancock Estabrook Second Annual Advisors to Small Business Symposium
- Hancock Estabrook’s Nineth Annual Labor & Employment Law Symposium
- Hancock Estabrook Eighth Annual Labor & Employment Law Symposium

### Reported Decisions

- *Whittaker v. University Surgical Assoc. et al.*, 2019 WL 4932829 (N.D.N.Y. Oct. 7, 2019) (Granting motion to dismiss age discrimination claims by former employee under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act).
- *Benson v. Family Dollar Operations, Inc.*, 2018 WL 5919905 (2d Cir. 2018) (Affirming jury defense verdict and partial summary judgment dismissing all discrimination and retaliation claims under ADA, ADEA and NYSHRL).
- *Matter of Kennedy*, 156 A.D.3d 1105 (3d Dep’t 2017) (Affirming denial of unemployment insurance benefits).
- *Andrews v. State of New York et al.*, 138 A.D.3d 1297 (3d Dep’t 2016) (Affirming dismissal of USERRA class action).
- *Welsh v. Rome Memorial Hosp.*, 2016 WL 6603216 (N.D.N.Y. Nov. 8, 2016) (Granting summary judgment for the employer and dismissing all claims under the ADA and Title VII).
- *Matter of Megan Jock v. Fastrac Markets, LLC*, Case No. 10147787 (New York State

Division of Human Rights 2013) (Dismissing claim of unlawful discrimination based on pregnancy and related medical conditions and claim for failure to provide a reasonable accommodation following an evidentiary hearing before an Administrative Law Judge).

- New York State Unemployment Insurance Appeal Board, Case No. 569724 (April 9, 2013) (Reversing Administrative Law Judge's decision and denying former employee benefits because the employee was terminated for disqualifying misconduct and finding the employee made a willful misrepresentation while applying for benefits).
- New York State Unemployment Insurance Appeal Board, Case No. 568220 (March 26, 2013) (Reversing Administrative Law Judge's decision and denying former employee benefits where employee refused a valid offer of reemployment without good cause).
- New York State Unemployment Insurance Appeal Board, Case No. 567410 (February 21, 2013) (Reversing Administrative Law Judge's decision and denying former employee benefits because the employee quit without good cause and failed to utilize the union's grievance procedure).
- *Granite Music Corp. v. Center Street Smoke House, Inc.*, 786 F.Supp.2d 716 (W.D.N.Y. 2011) (Awarding client statutory damages of \$10,000 per copyright violation, permanent injunction and attorney's fees.)
- *Michelle Sullivan v. Central New York Weight Loss, LLC*, Case No. 10125679 (New York State Division of Human Rights 2009) (Dismissing claims of unlawful discrimination based on gender and disability following an evidentiary hearing before an Administrative Law Judge).