



## → James R. Hays

### Of Counsel

30 Rockefeller Plaza  
New York, NY 10112

T: +1.212.634.3025

F: +1.212.655.1725

[jhays@sheppardmullin.com](mailto:jhays@sheppardmullin.com)

James Hays is of counsel in the Labor and Employment Practice Group in the firm's New York office and is a team leader of the firm's Traditional Labor Law Team.

### Areas of Practice

James' practice focuses on management labor and employment law. He represents clients in collective bargaining negotiations, labor arbitrations, and all stages of the labor election process, including election campaigns and hearings before the National Labor Relations Board. He also represents clients in employment litigation in federal and state courts, as well as various arbitration forums, and in proceedings before various administrative agencies, including the Equal Employment Opportunity Commission, the United States Department of Labor, and state agencies throughout the United States.

James advises and has represented clients in litigation concerning breach of non-compete agreements and theft of trade secrets. He advises employers on strategies for handling workplace harassment, internal investigations, reductions in staff, discipline and termination actions, and wage and hour issues. James devotes significant time to the defense of complex wage and hour class action litigation. He regularly counsels clients on preparation and administration of personnel policies and employment strategies and compliance with WARN, FMLA, ADA, COBRA and other federal and state labor statutes.

### Honors

New York Super Lawyer, *Super Lawyers*, 2013-2022

### Articles

- OSHA Emergency Temporary Standard Survival Guide  
12.22.2021
- United States Employment Law Update  
*Legal Era*, 12.15.2021
- A Biden Administration's New Vision for the American Workplace  
*Legal ERA*, 12.2020
- NLRB Memo May Void Some Union-Employer Neutrality Pacts  
*Law360*, 09.23.2020

- Noncompete Considerations As Businesses Reopen, Rehire  
*Law360*, 08.18.2020
- Classification Ruling Exhibits NLRB's Stance On Contractors  
*Law360*, 09.19.2019
- NLRB Ruling Clarifies Class Waivers For Employers  
*Law360*, 08.26.2019
- An Initial Guide to Post-Employment Restrictive Covenants  
*US-India Business Council Legal Services Newsletter*, Spring 2017
- Pre-Employment Testing and Screening: Common Practices, Potential Issues  
*New York Law Journal*, 10.19.2015
- "Government Reviews Work Shift and Overtime Requirements," *New York Law Journal*, May 29, 2015
- "Is That Volunteer Really An Employee?" *The Metropolitan Corporate Counsel*, October 16, 2014
- "A Decade In The Making: What Employers Can Expect From A Fully Staffed NLRB," *The Metropolitan Corporate Counsel*, November 2013
- "NLRB Law Update - Recent NLRB Decisions That Affect The Non-Union Workplace," *The Metropolitan Corporate Counsel*, November 2012
- "ADA Amendments Breathe New Life Into Disability Claims," *New York Law Journal*, May 4, 2012
- "Fears Of A Double-Dip Recession And Managing Workforce Reductions," *The Metropolitan Corporate Counsel*, November 2011
- "New York Takes Significant Steps to Ensure Employee Awareness Regarding Wages," *SHRM Legal Report*, July 2011
- "The Social Media Revolution: Recent Developments And Guidelines For Employers To Consider," *The Metropolitan Corporate Counsel*, December 2010
- "Work Force Reductions: Thoughtful planning helps take the sting out of the process—and reduce the risk of lawsuits," *New York Law Journal*, August 2007
- "Are Your Employees Entitled to Overtime Pay? The FairPay ('White Collar') Overtime Regulations," *The Metropolitan Corporate Counsel*, 2004
- "Evaluating the Poor Performer: Guidelines for the Non-legal Manager," *ACCA Docket* 19, No. 3, 2001

## **Labor & Employment Law Blog Posts**

- "Congress Introduces the 'American Franchise Act' to Clarify Joint Employer Liability," November 24, 2025
- "Ninth Circuit Upholds NLRB Authority and Structure – Creating Split with Fifth Circuit," November 3, 2025
- "NLRB Challenges California's AB 288 as Preempted by Federal Law," October 20, 2025
- "Captive Audience Meetings: Prohibitions Remain on Hold," October 3, 2025
- "California Signs Law Granting State Agency Authority Over Private Sector Labor Disputes," October 2, 2025
- "The NLRB Announces Its Intention to Sue Just as Governor Huchul Signs Bill Asserting Jurisdiction Over Labor Relations in New York," September 12, 2025

- "Fifth Circuit Rules NLRB Structure Likely Unconstitutional," August 21, 2025
- "Hold the Salt: Key Takeaways from the NLRB's New Guidance on Union Salting," August 8, 2025
- "New York State Looks to Take Over Labor Law Enforcement Amidst Uncertainty at the NLRB," June 24, 2025
- "Oregon Federal Judge Strikes Down State Law Requiring Labor Peace Agreements for Cannabis Licensure and Certification – OLCC Will No Longer Enforce State Requirement," May 30, 2025
- "Supreme Court Decides Against Reinstating Wilcox to NLRB as They Rule on Her Termination – NLRB Remains Without a Quorum," May 23, 2025
- "Chief Justice Roberts Allows Trump to Remove Wilcox from NLRB as the Supreme Court Considers the Challenge to Her Dismissal," April 10, 2025
- "Full D.C. Circuit Court Reinstates Wilcox to the NLRB," April 7, 2025
- "Split D.C. Circuit Panel Rules Trump Can Remove Wilcox from NLRB – NLRB to Stay Without a Quorum," April 1, 2025
- "Federal District Court Reverses Firing of NLRB Member Wilcox – NLRB Returns to Statutory Quorum," March 12, 2025
- "Mandatory Captive Rules in Limbo for California Employers – 2 Federal Lawsuits Challenge SB 399 and Looming Issue Before the NLRB," March 5, 2025
- "Acting General Counsel of NLRB Issues First GC Memorandum, Rescinding Controversial Pro-Labor Memoranda," February 26, 2025
- "NLRB Returns to Union-Friendly 'Clear and Unmistakable Waiver' Standard," December 16, 2024
- "Mandatory Captive Audience Meetings Are Banned in California in 2025," October 4, 2024
- "NLRB Will No Longer Approve Employer Proposed Consent Orders," August 26, 2024
- "California Assembly Committee Revives State's Captive Audience Meeting Ban," August 22, 2024
- "The NLRB Implements Its Fair Choice – Employee Voice Final Rule – Effective September 30, 2024," August 19, 2024
- "Texas Judge Enjoins NLRB From Proceeding Against SpaceX, Casting Further Doubt on NLRB's Constitutionality," July 30, 2024
- "The NLRB Must Apply Its Prior Standard for Protected Employee Outbursts and Abusive Speech," July 19, 2024
- "U.S. District Court Grants 10(j) Injunctive Relief and Requires Employer to Bargain With Union That Lost Secret Ballot Election," May 17, 2024
- "NLRB Finds GW Hospital Failed to Bargain in Good Faith in Reversal of Vacated Decision," May 13, 2024

- "Cannabis Operator Challenges California State Statute and Regulations Requiring Labor Peace Agreements," May 7, 2024
- "NLRB General Counsel Issues New Memo Further Expanding Penalties for Unfair Labor Practice Violations," April 19, 2024
- "Judge Issues First Post-Cemex Bargaining Order Despite Employer Winning Union Election," October 20, 2023
- "Pair of Board Decisions Significantly Limit Employers' Power to Act Unilaterally and Past Practice Defense," September 13, 2023
- "NLRB Expands Scope of What Is Considered Protected Concerted Activity in Workplaces," September 6, 2023
- "Newly Created NLRB Rules Drastically Change the Process for Unions Seeking Recognition of Most Private Sector Employees in the U.S. and Substantially Limits Employee Voting in Secret-Ballot Election," August 30, 2023
- "NLRB Adopts Volatile New Standard for Evaluating Work Rules," August 4, 2023
- "SCOTUS Issues Decision Allowing State Court Lawsuit Against Union for Property Damage Caused During Labor Dispute," June 19, 2023
- "NLRB Overturns Standard for Independent Contractor Status Under the NLRA," June 15, 2023
- "NLRB General Counsel Announces Employee Non-Compete Agreements Violate the NLRA," June 12, 2023
- "Back to Normal, Almost – NLRB General Counsel Issues Updated Guidance on Suggested Manual Election Protocols and Push for Manual Elections by the NLRB," June 7, 2023
- "...But Words Will Never Harm Us? The NLRB Restores Precedent Protecting Abusive Workplace Speech by Employees While They Are Engaged in Protected Concerted and Union Activities," May 12, 2023
- "NLRB General Counsel Issues Memo Updating Prosecutorial Priorities," May 3, 2023
- "NLRB General Counsel Releases Memo Concerning Confidentiality and Non-Disparagement Clauses in Severance Agreements Post-McLaren," March 23, 2023
- "We Can Now Add Civility and Secrecy to the List of Things Money Can't Buy: NLRB Rules Non-Disparagement and Confidentiality Clauses in Severance Agreements Unlawfully Restrain and Coerce Employees," February 23, 2023
- "SCOTUS Hears Oral Argument on Whether NLRA Preempts State Court Lawsuits Against Unions for Property Damage Caused During Labor Disputes," January 20, 2023
- "NLRB Provides Off-Duty Contractor Employees With Property Access to Engage in Section 7 Activity," January 4, 2023
- "NLRB Confirms a Return to Union Gerrymandered Bargaining Units," December 16, 2022

- "Caught on Video No More? NLRB General Counsel Releases Memo Urging Board to Curtail Employer Use of a Variety of Surveillance Technologies in Workplace," November 7, 2022
- "NLRB Revisits Union Dues Checkoff Rule," October 10, 2022
- "NLRB Releases Proposed Joint Employer Rule Rolling Back Trump-Era Standard," September 6, 2022
- "Union Election Petitions on the Rise, Total Number of FY21 Petitions Eclipses in First Three Quarters of FY22," July, 15, 2022
- "EEOC Issues Guidance Regarding How Employer Software and Artificial Intelligence May Discriminate Against Individuals With Disabilities," June 13, 2022
- "NLRB General Counsel Seeks to Reinstate Radical Standard for Union Recognition and Restrict Employer Free Speech During Corporate Organizing Campaigns," April 18, 2022
- "NLRB General Counsel Will Ask the Board to Find That Captive Audience Meetings Violate the NLRA," April 8, 2022
- "NLRB to Decide Whether Misclassification Is Standalone Violation of the NLRA," March 31, 2022
- "NLRB General Counsel Issues Memorandum on Increased Inter-Agency Coordination, Collaboration," February 11, 2022
- "NLRB Rings in the New Year by Inviting Briefing on Multiple, Far-Reaching Standards Impacting Employers," January 19, 2022
- "NLRB Foreshadows a Return to Union Gerrymandered Bargaining Units," December 28, 2021
- "OSHA Emergency Temporary Standard Survival Guide," December 22, 2021
- "NLRB General Counsel Issues Memos Calling for New Harsher Penalties for Unfair Labor Practice Violations," September 22, 2021
- "New Laws Passed in New Jersey Designed to Identify and Penalize Employers Who Misclassify Employees as Independent Contractors," September 13, 2021
- "NLRB General Counsel Sets an Agenda to Reverse Trump-Era Board Policy," August 19, 2021
- "New York Proposes Biometric Privacy Act With Private Right of Action," January 27, 2021
- "SCOTUS to Consider Whether California Unconstitutionally "Takes" Private Property When It Compels Employers to Grant Union Access to Private Property," November 16, 2020
- "New Jersey Governor Murphy Orders New COVID-19 Workplace Protocols," November 9, 2020
- "Pregnancy Workers Fairness Act Heads to the Senate," October 28, 2020
- "GC Finds Merit in COVID-19 Related ULP Cases in GC Memo 20-14," September 22, 2020
- "Neutrality and Labor Peace Agreements – When Its Unlawful for an Employer to Be "Too Neutral" as to Union Organizing Under the NLRA," September 16, 2020
- "The Board Weighs In on the COVID Mail Ballot Controversy," September 1, 2020
- "Board Announces Intent to Issue New Rules Eliminating Disclosure of Certain Personal Information and Requiring Absentee Ballots for Those on Military Leave," July 29, 2020
- "1st Circ. Holds Non-Compete Agreement Unenforceable Against Fired and Rehired Employee," July 27, 2020

- "Sticks and Stones...The NLRB Rethinks Its Position on Abusive Workplace Speech by Employees While They Are Engaged in Protected Concerted and Union Activities," July 23, 2020
- "NLRA "Advice" All Employers Should Consider in a COVID World," July 23, 2020
- "AFL-CIO Sues the Board Over New Rules – AGAIN," July 17, 2020
- "Will the NLRB GC's "Suggested" Manual Election Protocols Matter?," July 10, 2020
- "Board Invites Briefs and Signals a Possible Shift in Its Contract Bar Rules," July 10, 2020
- "U.S. Supreme Court Backs Broad Interpretation of the "Ministerial Exception," Shielding Religious Employers From Employment Discrimination Claims," July 10, 2020
- "Judge Jackson Explains the Basis for Her Invalidation of the Board's Election Regulations," June 19, 2020
- "New Jersey Department of Labor Releases Posters for Employers to Utilize to Satisfy Employee Misclassification Posting Requirements," June 9, 2020
- "The NLRB Reacts to Court's Eleventh-Hour Partial Injunction of the Agency's New Election Rules," June 2, 2020
- "Why, How and When Katz May "Trump" an Expired CBA When It Comes to Making Unilateral Changes – The Relationship Between MV Transportation and Raytheon Network," April 23, 2020
- "Keep a Lid on It – The Trump NLRB Reaffirms Employer Ability to Enforce Investigative Confidentiality Rules," April 22, 2020
- "New Jersey Gives Employers a Break on New WARN Requirements Due to COVID-19," April 17, 2020
- "Empire State of Mind: Governor Cuomo Proposes Bill to Provide Immediate Assistance for New Yorkers Impacted by COVID-19", March 18, 2020
- "New York Targets Members of Out-of-State LLCs in New Wage Theft Bill," January 6, 2020
- "Department of Labor Issues Final Rule on Calculating the Regular Rate of Pay Under the Fair Labor Standards Act," January 2, 2020
- "NLRB Reinstates Broad Deferral of Discrimination Cases to Arbitration, Overruling the Obama Board's 2014 Decision in Babcock & Wilcox," January 2, 2020
- "Employers May Now Forbid Employees Using Co. Email for Protected Concerted Activities, Forbid Employees from Discussing On-Going Workplace Investigations, and Cease Checking Off Union Dues," December 20, 2019
- "New Jersey Bill Would Codify a Stricter Version of ABC Test for Determining Independent Contractor Status," November 14, 2019
- "An Employer's Bargaining Table Complaints as to Poor Business Conditions Is Not a Claim of Poverty Entitling a Union to Business Sensitive Information," September 16, 2019
- "More Good News From The Board: NLRB Scraps The Clear And Unmistakable Waiver Standard For The Contract Coverage Test When Deciding Unilateral Change Cases," September 11, 2019
- "Employers May Not Have To Retain Racists, Sexists And Belligerently Disobedient Employees After All-The NLRB Appears Ready To Rethink Its Positions On Controversial Discipline-Related Doctrines," September 11, 2019
- "The NLRB Nixes Union Gerrymandering And Establishes A Three Step Test For Voting Unit Determinations," September 11, 2019

- "The NLRB Rules That Employers May Bar Union Representatives From Their Property Even Though They Have Allowed Other Third Parties To Engage In Civic, Charitable Or Commercial Solicitations There," September 10, 2019
- "An Employer's Erroneous Announcement To Employees Declaring Them Independent Contractors Does Not, Standing Alone, Violate The NLRA," September 5, 2019
- "The NLRB Holds That Employers May Implement Class Waivers in Response to Class Claims and Discipline Employees Who Refuse to Sign Them," August 15, 2019
- "Breaking with Tradition, The Current NLRB is on a Rulemaking Tear: Election Procedures, Recognition Bar, and 9(a) Collective Bargaining Relationships," August 13, 2019
- "New York Requires Employees be Provided 3 Hours Paid Time Off to Vote," June 3, 2019
- "Did New Jersey Just Try to Ban Employment Arbitration Agreements?" March 28, 2019
- "Transgender Discrimination Outlawed in New York," February 13, 2019
- "New York City Council Enacts Package of Bills to Combat Sexual Harassment," April 13, 2018
- "The U.S. Department of Labor Rolls Back Obama-Era Guidance on Joint Employers and Independent Contractors," June 7, 2017
- "Unpersuasive: Federal Judge Invalidates DOL's New Persuader Rule," November 16, 2016
- "Second Circuit Holds That Facebook "Like" May Be Concerted Activity Under Section 7 of the NLRA," November 16, 2015
- "New York State Department of Labor Published Proposed Rules Regarding Non-Exempt Employees Paid by Debit Card," June 5, 2015
- "U.S. Supreme Court Rules that Security Screening Time is Non-Compensable Under Federal Law and The Portal-to-Portal Act," December 11, 2014
- "Recent Notable National Labor Relations Board Decisions," August 21, 2012
- "NLRB Launches New Website Regarding Concerted Activity," June 25, 2012
- "The EEOC Issues Updated Guidance on Employer Use of Arrest and Conviction Records," May 4, 2012
- "The EEOC Finds Discrimination on the Basis of Gender Identity (Against a Transgender Individual) a Viable Claim Under Title VII," May 1, 2012
- "Password Protected - Proposed Social Media Privacy Legislation," March 26, 2012
- "Unemployed Status -- The New Protected Class," March 7, 2012
- "New York State Wage Theft Prevention Act Notice Requirement," January 23, 2012
- "Second Circuit Finds that Employers May be Obligated to Accommodate a Disabled Employee's Commute," October 11, 2011
- "NLRB Requires Employers to Post Unionization Rights Notice," September 2, 2011
- "Connecticut Becomes First State to Mandate Paid Sick Leave," July 20, 2011
- "NLRB Proposes Significant Representation Election Changes That, If Finalized, Likely Will Aid Unionization Efforts," July 1, 2011

## Media Mentions

NLRB Memo Won't Bring End To Mail-In Union Voting  
*Law360*, 07.15.2020

Is the NLRB Embracing Common Sense?  
*Material Handling & Logistics*, 11.25.2019

With New Prez, Hotels Hope For Browning-Ferris Reversal  
*Law360*, 02.03.2017

New NLRB Acting Chairman May Tilt Board Pro-Business  
*Society for Human Resource Management*, 01.30.2017

NLRB Decision Could Complicate 'Mixed Unit' Collective Bargaining  
*Society for Human Resource Management*, 07.15.2016

Texas Court Halts Timeline on 'Persuader Rule'  
*Society for Human Resource Management*, 06.28.2016

NLRB Limits Right to Permanently Replace Strikers  
*Society for Human Resource Management*, 06.10.2016

Refusal to Cross Picket Lines Is Protected for Most Employees  
*Society for Human Resource Management*, 04.18.2016

Workplace Guidance Remains Elusive After Facebook Posting Case Is Settled  
*Workforce Management*, 02.09.2011

## Speaking Engagements

"Understanding the Integration of FMLA, WC, Disability and COBRA Time Lines," Lorman Webinar, May 22, 2019

"Winning in the U.S. – Key Legal topics and Updates for 2018," Endo-American Chamber of Commerce, February, 16, 2018, Mumbai, India

"Key NLRB Developments for Non-Union and Union Employers," Strafford CLE Webinars, February 3, 2016

"Where Is the National Labor Relations Act? Non-Traditional Organizing and Technology," Symposium on Technology in the Practice and Workplace, New York Law School, April 30-May 2, 2014

"Labor & Employment Law: 2012 Year In Review," New York, New York, November 15, 2012

"Key NLRB Developments for Non-Union and Union Employers," Strafford CLE Webinars, November 14, 2012

"Labor & Employment Law Update: Spring 2012 Seminar," New York, New York, May 9, 2012

"Labor & Employment Law: 2011 Year In Review," New York, New York, November 3, 2011

"U.S. Labor Laws—What You Need to Know to Avoid Problems," Institute of International Bankers and Conference of State Bank Supervisors, 2010-2017

"Labor & Employment Law Update: Spring 2011 Seminar," New York, New York, May 19, 2011

"Labor & Employment Law Update: 2010 Year in Review," New York, New York, November 10, 2010

"Training for Supervisors—How to Limit Liability for Employment Issues," Lorman Education Services, July 2010

"Employment-Related Records," Lorman Education Services, October 2007

"How to Conduct an Internal Investigation," December 2006

"2006 Employment Law Update—A Review of Recent Developments," November 2006

"How to Maintain an Effective Human Resources Department," Lorman Education Services, September 2006

"Advanced Workplace Investigations," Lorman Education Services, April 2006

"New Employment Law From A to Z," Lorman Education Services, November 2005

"Payroll Management in New York," Lorman Education Services, May 2005

"Mastering the FMLA Puzzle," Council on Education Management, April 2005

"The FairPay Regulations—New Overtime Challenges," The Tower Club Breakfast Seminar Series, November 2004

"2004: A Dynamic Year In Employment Law—Recent Developments," September 2004

"Unions—How to Deal with Them," 46th Annual Professionals In Human Resources Association Conference, September 2003

"Human Resource Audits in New York," Lorman Education Services, August 2001

## Events

Labor & Employment Law Update - Year In Review

Studio Gather 45 Rockefeller Plaza, New York, NY 10020, 11.02.2023

Sheppard Mullin's Labor & Employment Law Update - Year In Review

Convvene, New York, 11.08.2022

Sheppard Mullin's Labor & Employment Law Update - Year In Review

Webinar, 11.12.2020

Getting Back to Business Webinar Series (Part 1)

Planning and Best Practices for Employers in a Changed Workplace

Webinar, 05.21.2020

CANCELED: Unions Launch New Effort to Organize Game Companies - Are you Ready?  
Sheppard Mullin San Francisco, 03.19.2020

Labor & Employment Law Update  
New York  
06.07.2018

Timely Topics Facing Indian Lawyers and Chief Legal Officers  
Hosted by Sheppard Mullin and the USIBC  
12.14.2015

Timely Topics Facing Indian Lawyers and Chief Legal Officers  
Hosted by Sheppard Mullin and the USIBC  
12.08.2015

Sheppard Mullin's Labor & Employment Year In Review  
11.19.2015

Sheppard Mullin's Spring 2015 Labor & Employment Law Update  
05.05.2015

2014 Labor & Employment Year In Review  
11.13.2014

2013 New York Labor & Employment Update  
Grand Hyatt New York, 06.19.2013

2012 Labor and Employment Year in Review  
How the U.S. Presidential Election and the Current Economy Will Impact Labor and Employment Laws in 2013 and Beyond  
Grand Hyatt New York, 11.15.2012

Labor & Employment Law Update 2012  
The W Hotel, New York, 05.09.2012

Labor & Employment Law: 2011 Year In Review  
New York  
The W Hotel, 11.03.2011

Labor & Employment Law Update - Spring 2011  
Sheppard Mullin New York, 05.19.2011

Labor & Employment Law Update: 2010 Year in Review  
W New York, 11.10.2010

## Podcasts & Webinars

Sheppard Mullin's Labor & Employment Law Update - Year in Review (New York)  
11.08.2022

Sheppard Mullin's Labor & Employment Law Update - Year In Review  
11.12.2020

Getting Back to Business Webinar Series: Session One  
05.21.2020

## Practices

Labor and Employment  
Labor and Employment Counseling  
Labor Union Management Relations  
Labor and Employment Litigation  
International Reach  
South Asia  
Healthcare

## Industries

Healthcare

## Education

J.D., New York Law School, 1990  
B.A., Catholic University, 1982

## Admissions

New York  
Connecticut  
U.S. Supreme Court  
U.S. District Courts for the Southern, Eastern, and Northern Districts of New York  
Western District of Michigan  
District of Connecticut