

Spotlight: Employment Law Attorney Sean M. Fontes

Description

[Sean M. Fontes](#) serves as Counsel in the [Employment](#) and [Litigation](#) practice groups, where he focuses on employment law compliance and employer-side litigation. Sean counsels businesses on new and existing employment law compliance, handles all aspects of collective bargaining agreements, and represents employers who have been sued by their employees for discrimination and wage and hour claims. Sean also provides trainings to employers on employee discipline, performance management, promotions and terminations, and union grievance procedures and best practices.

Prior to PSH, Sean led the Legal Division at the Rhode Island Department of Labor and Training (DLT), serving under three administrations. This experience has given Sean the unique ability to render practical advice to employers regarding equal pay laws and corresponding self-audits.

Here's a Question & Answer session to get to know Sean's wage and hour audits and equal pay audits experience a bit better:

Wage and Hour Audits

Q: What training initiatives did you conduct as executive counsel for the Rhode Island Department of Labor and Training related to wage and hour audits?

A: As executive counsel for the Rhode Island Department of Labor and Training, I handled the training of the wage and hour investigators to prepare them for both large scale audits as well as small employer audits. The trainings included how to review employer time sheets and employer payroll records, legally relevant questions for employer interviews, the drafting of administrative subpoenas for employer records, and the drafting of legally sufficient notices of violations. These trainings were designed to prepare the investigators for audits in a wide variety of industries, such as retail, construction, and financial services. Through these trainings, investigators would learn how to spot red flags and make inquiries that would be likely to uncover illegal wage and hour practices, such as misclassification of workers as 1099 workers or making someone a salaried employee that really should be hourly.

Q: How does your experience as counsel and advisor to Department of Labor wage and hour investigators inform your guidance on wage and hour self-audits at Partridge Snow & Hahn LLP?

A: I have found my experience on the DLT side to be critically important to employers in my private practice for Partridge Snow & Hahn LLP. One way it is useful is to help clients spot potential legal liability they might be risking without even knowing it. For example, when I am talking to a client about something like handbook compliance, if the client says they don't have nonexempt (hourly) employees working for them, I know from my experience with the DLT, that is often an indication that they are misclassifying at least one worker as exempt, as it is very unusual not to have someone working for a Company that performs more routine, manual or lower-level responsibilities. In such a case, I can steer the client to start thinking about hourly and salaried classifications so they can at least understand what the risks are and make an informed decision about what risks are worth taking.

In addition, my experience directly applies to advising clients on how to conduct thorough and effective wage and hour self-audits based upon my informed and experienced knowledge of audits conducted by wage and hour investigators. In addition, while I am still under the one (1) year revolving door restriction which prevents me from appearing before the Rhode Island Department of Labor and Training under the state's ethics laws, I also represent employers who are currently being audited by the United States Department of Labor or

Massachusetts Attorney General wage and hour investigators. While of course there are certain differences between a federal or Massachusetts audit and a Rhode Island audit, there are more similarities than differences as to how these audits work.

Q: How do you leverage your experience to assist clients with wage and hour self-audits?

A: My prior experience allows me to explain how audits are triggered, what happens in an audit and the likely outcomes of an audit to clients on a very practical level. Any attorney can read wage and hour statutes and advise a client what a penalty could be or identify any possible violation of the law. My experience allows me to take this a step further and drill down on investigator tendencies and what the client is the most likely to get caught doing wrong and what would be the likely consequence – not just the worst-case scenario – if they do get caught.

Equal Pay Audits

Q: What were your responsibilities as executive counsel for the Rhode Island Department of Labor and Training regarding equal pay audits?

A: As executive counsel for the Rhode Island Department of Labor and Training, I promulgated Rhode Island's pay equity regulations, including the self-evaluation/audit rules contained in the state's equal pay regulations, ensuring that they became legal requirements and obligations of Rhode Island employers. These are the very rules and statutes that employers are now responsible for following and interpreting.

Q: Can you describe your training initiatives for wage and hour audits and how they translate to equal pay audits?

A: As executive counsel for the Rhode Island Department of Labor and Training, I conducted fact gathering trainings for the wage and hour investigators to ensure the investigators used thorough and effective wage and hour audit techniques and methods in investigations of employers. As part of this, I trained investigators on how to use administrative subpoenas, witness statements, and employer records in corroborating and supporting factual findings and claims. These same techniques and methods are used by Rhode Island Department of Labor and Training wage and hour investigators in equal pay investigations conducted by the wage and hour investigators today.

Q: How do you leverage your experience in private practice to advise clients on conducting effective equal pay self-audits?

A: My past experience provided me with a comprehensive understanding of the equal pay portion of the Rhode Island Fair Employment Practices Act, which became effective on January 1, 2023. One example of how I can leverage that in my private practice at Partridge Snow & Hahn is in advising clients on conducting audits for protection from liability through the self-audit affirmative defense. Specifically, one piece of the equal pay act regulations is that employers have the opportunity to conduct a good faith audit that will cut off all potential damages for violations for 2 years after the audit. This is a huge benefit for employers. My experience allows me to accurately assess how to conduct the self-audit so that it will be deemed sufficient to qualify for the affirmative defense. I use that example, because I find many Rhode Island employers don't want to go through the cost and headache of doing a self-audit because they are unsure of how to do it in a way that will get them the protection they are seeking. My extensive experience in this area also translates to advising clients on performing self-audits in Massachusetts, which also has a provision that allows employers conducting sufficient audits to cut off damages for claims, albeit in Massachusetts the protection is not from all liability, but rather from certain damage multipliers.

General

Q: How does your job differ at Partridge Snow & Hahn from your work at the RIDLT?

A: The Rhode Island Department of Labor and Training's role is to ensure employers follow the wage and hour

laws. While of course my prior work allows me to easily provide models for employer best practices, my role at Partridge Snow & Hahn is to help clients understand which laws they currently may not be in compliance with, help them understand what changes they could make to get in compliance with the law and then also assess the benefits and costs associated with making those changes. As part of that analysis, I will also advise them as to the likely outcomes if they do not make any changes. Partridge Snow & Hahn helps clients make informed choices as to their employment practices and based upon client preferences and risk tolerances, helps the client be in the best position to avoid claims and state actions, minimize the value of claims and state actions and maximize potential defenses to claims and state actions. In addition, we also defend our clients against claims and represent them in state actions.

Date Created

July 17, 2024